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Edited by Lynn Roe, Secretary to the Director

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, August 13, 2004 – 12:30 p.m.
Saturday, August 14, 2004 – 8:00 a.m.
NAU, DuBois Center, Building 64
306 E. Pine Knoll Dr.
Flagstaff, Arizona 86011

PRESENT: (Commission)

Chairman Chilton
Commissioner W. Hays Gilstrap
Commission Joe Melton
Commissioner Michael M. Golightly
Commissioner William H. McLean

(Director's Staff)

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Assistant Attorney General Jim Odenkirk
Assistant Attorney General Shelley Cutts

Chairman Chilton called the meeting to order at 12:30 p.m. Members of the Commission introduced themselves. Chairman Chilton introduced the Director's staff. The meeting followed an agenda dated August 10, 2004.

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1. Executive Session

- a. Sale or Lease of Real Property. The Commission may vote to go into Executive Session to discuss, consult with, and instruct its attorneys and Department staff concerning negotiations for the sale or lease of real property and associated water rights pursuant to A.R.S. § 38-431.03 (A)(7).
- b. Legal Counsel. The Commission may vote to meet in Executive Session in accordance with A.R.S. § 38-431.03 (A) (3) and (4) for the purpose of discussing and consulting with legal counsel in order to consider its position and to instruct legal counsel regarding the Commission's position on *Montoya v. Manning*, CIV98-0239 PHX RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Mark Boge v. Arizona Game & Fish Commission & Shroufe*, CIV2000-020754; *Mary R. LLC, et. al. v. The Arizona Game & Fish Commission*, CIV2001-015313; *Ameduri and Yee et. al. v. U.S. Forest Service et al.*, U.S. District Court No. CIV 02 2495 PCT FJM; *Bar D Cattle Co. v. Shroufe*, CIV2002-0872; *Phelps Dodge Corp. v. Arizona Dept. of Water Resources*, LC2003-000243-001DT; *Arizona Zoological Society, et. al. v. BLM, IBLA appeal no. 2002-412*, *Center for Biological Diversity v. Norton*, 03 CV-01558 RCL, and *Audubon Society of Portland v. USFWS*, CV04-670-KI.
- c. Legal Counsel Regarding the Silverbell Bighorn Sheep Herd. The Commission may vote to meet in Executive Session in accordance with A.R.S. sections 38-431.03(A)(3) and (4) for the purpose of discussing and consulting with legal counsel in order to consider its position and instruct legal counsel regarding the Commission's position on possible settlement or

litigation over the damages associated with the epizootic episode in the Silverbell Bighorn Sheep Herd.

- d. Personnel Matters. The Commission may vote to go into Executive Session to discuss personnel matters, including the Director's goals and objectives pursuant to A.R.S. § 38-431.01 (A) (1). The Commission may decide this matter in the public meeting or defer a decision to a later date.

Motion: McLean moved and Melton seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed at 12:30 p.m.

Meeting reconvened at 1:30 p.m.

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2. Hearings on License Revocations for Violation of Game and Fish Codes and Civil Assessments for the Illegal Taking and/or Possession of Wildlife.

Presenter: Leonard L. Ordway, Law Enforcement Branch Chief

Record of these proceedings is maintained in a separate minutes book in the Director's Office.

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3. Rehearing Request Regarding Previous License Revocation/Civil Assessment.

Presenter: Leonard L. Ordway, Law Enforcement Branch Chief

MR. ORDWAY: Mr. Alan Kowalski has requested the Commission to schedule a rehearing regarding the action taken on June 18, 2004, revoking his licenses to hunt, fish and trap for a period of five years; invoking a civil assessment of \$1,366.64 and further requiring him to complete a hunter education course before obtaining any licenses in the State of Arizona. The Commission may be asked to vote or modify its decision or grant a rehearing. Mr. Kowalski is not here. In your packet for your review regarding this decision is a case summary of your meeting, excerpts from the minutes, commission rule R12-4607, which is the basis for the rehearing review by the Commission, and the request for review by Mr. Kowalski.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION, BASED ON THE CONCLUSION THAT NONE OF THE CAUSE LISTED IN COMMISSION RULE R12-4607, SECTION D, EXIST, VOTE TO AFFIRM ITS ORIGINAL DECISION AND NOT GRANT THE REHEARING.

Vote: Unanimous

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4. An Update on Current Issues, Planning Efforts, and Proposed Projects on State and Federal Lands in Arizona and Other Matters Related Thereto.

Presenter: Bob Broscheid, Habitat Branch Chief.

MR. BROSCHEID: The Lands Update is in fulfillment of the Department's commitment to brief the commission on a regular basis on land and resource management decisions and actions and related matters on lands in Arizona. This update presents new information as well as progress towards resolving ongoing uses and concerns since the June commission meeting.

CHAIRMAN CHILTON: I do want to mention the Pinaleno Demonstration Project. Could you explain a little about where we are in that process relative to the fire.

MR. BROSCHEID: The Director sent you a memo last week regarding the status of that project. The Department has been working cooperatively with the Forest Service to develop forest health and restoration projects around high value sites up on Mt. Graham. The Nuttall-Gibson fire burned about 30,000 to 40,000 acres of that mountain range, predominantly on the north slope. That stalled this project a little bit because some of the areas that were proposed for treatment were impacted by that fire. The Forest Service is going to go back, reevaluate those treatment sites to see if treatments are still needed that weren't impacted by the fire, in other words, and then go back through the scoping process and issue a proposed action. So at this time they're just gathering data to see if treatments are necessary.

CHAIRMAN CHILTON: I see that these treatments are also having the goal of providing for old growth Douglas Fir development. I'm sure that's part of the food supply for the red squirrel. In regards to the spruce, bark and fir, beetles, do you have any reports yet or could you provide us next time with some reports on what the impact has been to the habitat for the red squirrel?

MR. BROSCHEID: I will. As part of this being an ecosystem restoration project, the Department is going to be meeting with all agencies involved twice in August to finalize the proposed action. I think by then we will have more information regarding impacts of the fire, not just on the Mt. Graham red squirrel but in addition, the forest and this project and the health of that mountain range.

CHAIRMAN CHILTON: We're going to get to take a field trip up there, aren't we?

MR. BROSCHEID: Right.

CHAIRMAN CHILTON: Next month, in connection with the meeting in Safford, we need to see what happened.

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5. A Presentation Regarding the Bureau of Land Management's Ongoing Planning Efforts in Arizona.

Presenter: Bob Broscheid, Habitat Branch Chief.

MR. BROSCHIED: In 2000 and 2001 President Clinton designated five new national monuments in Arizona that included public lands managed by the Bureau of Land Management (BLM). As a result, BLM is required to develop management plans to guide future management and activities within each of the monuments that is consistent with the Presidential proclamations. Since the incorporation of these monuments, management plans will require an amendment to their associated or respective resource management plans. BLM determined that the resource management plans, or RMPs, for each planning area in Arizona were outdated and required revision. Therefore, BLM is currently in the process of updating several RMPs and developing five National Monument plans in Arizona. BLM manages about 12.2 million surface acres of public lands in Arizona. The land use planning process, which includes significant public involvement, gives the agency direction on how these public lands should be managed into the future. BLM currently has 10 stand-alone land-use plans, which include six resource management plans, one management framework plan and three land-use plan amendments. As a result of the designation of these monuments, the Department has been working cooperatively with BLM. Through a jointly funded position where BLM and the Department have contributed funds to pay for a position that will ensure fish and wildlife management activities and wildlife related recreation are considered and addressed during the development of these plans. At this time the Department is currently working with the BLM on the following planning efforts: The first one is the Agua Fria National Monument and the Bradshaw-Harquahala planning area. Two is Vermilion Cliffs and the Grand Canyon-Parashant National Monuments and the Greater Arizona Strip resource planning area. Three is Sonoran Desert National Monument and the Phoenix South planning area, the Ironwood Forest National Monument, Lake Havasu Field Office planning area, Yuma Field Office planning area and the San Pedro Riparian National Conservation area. That's going to coincide with the Tucson Field Office planning area. I'd like to introduce Mr. Mike Taylor. He's the Arizona Deputy State Director for the Bureau of Land Management, and he'll provide the Commission with a more general overview for the BLM's planning process and efforts currently underway in Arizona.

CHAIRMAN CHILTON: Mr. Taylor, first I'd like to say welcome and we want to tell you thank you for the present attitude toward working with the Commission. The efforts that you and your agency have made to improve our ability to coordinate and work together so we can work on habitat issues and work on game management issues.

MR. TAYLOR: The Bureau of Land Management really does appreciate the opportunity to come today and particularly express our support for the Department and the work they've been doing with us in our planning effort. What I'd like to do today is give you a little bit of a general background on our planning process and answer some specific questions on what we're doing. The BLM operates our planning process as directed under the Federal Land Policy and Management Act, which was passed in 1976. It required the bureau to develop plans to guide our land management activities. They are currently called "resource management plans." With the creation of the National Monuments several years ago, we were required to do the land

management planning on those monuments. We recognize and have for a number of years that our existing plans were a little bit old and we needed to update them. So we launched on a pretty ambitious project throughout the state to get our plans updated. Along the same lines, we feel very strongly that the more we can have public involvement, and the more that we can have cooperative working relationships with other agencies, the better our products will be in the end. To that end we have worked very closely with the Department in trying to achieve that. Of all the agencies that we've reached out to, the Department has taken the most interest and provided the most input in working with us, to the point of jointly funding a position to work jointly with us and make sure that we are closely collaborating and sharing information, and making sure that all concerns and issues are aired early on in the process. We feel very strongly that's the right way to do this work. Some of you may have been hearing from constituents, concerns about our planning process and we feel that's very healthy because in times past the bureau has basically gone through a process where in-house we would work up our plans and put them out to the public for review. Quite frankly, as good as we try to do our work, we may not be as closely in touch with the concerns and issues of the general public or other agencies having done it that way. So right now as we work through this process, we're working very closely with the Department and any of their constituents and other agencies and other publics, and making sure that we reach out and get as much information as possible as we go through this process. Where we're at right now, we're in the early stages of six plans. The two that are the furthest along are the plan that's addressing the Arizona Strip lands and the plan that is addressing the land known as the Agua Fria Bradshaw Foothills Harquahala planning unit, both of those efforts are scheduled to be out in draft this fall. We're hoping that they'll be done before your next Commission meeting, but we want to make sure that when we go out with the draft, we've got these things as right as possible. So we're going to strive to make sure those things happen early this fall. Again, I'd just like to say that the process we've been following with the Department has been personally, and from the bureau's standpoint, exceptional.

COMMISSIONER MELTON: Constituents down in my county have a lot of questions. A lot of these questions are dealing with what they're looking for in the final answers when we're actually only in the draft position. I talked to you before the commission meeting, and you volunteered to go down and enlightened our group down there. I think instead of taking the time here in the meeting to go back over all these issues again that we would just invite you down to Yuma so you can come down and talk to the board and the guys and address those issues. Those issues deal with the scariness of wilderness. That's probably the worst word we could have used when we were putting this whole process together. Anything besides that would have alleviated a whole bunch of these problems. When they start talking about wilderness, the wilderness values, there is great concern. We're having buffer areas and a lot of things that the wilderness act said we possibly couldn't have. But I think our president here from the Rod and Gun Club is here. If he wants to ask you some specific questions, I think that would be really fine. I do appreciate you coming, and we will set up a meeting for you to come down and address the group down there one on one, talk out the issues right there in front of all of them. With that I really do appreciate you coming forward. I think you've answered my questions, and I can go back and answer their questions.

CHAIRMAN CHILTON: I want to sort of summarize what our concerns have been. We're concerned about preserving access for all the various multiple uses that have historically

occurred there, access for game management, access for water construction and water development and maintenance of the infrastructure that has been put there by Game and Fish for the benefit of wildlife. We are concerned about this and all other designations in that they present a huge financial and time commitment on the part of many people to develop these plans. That diversion of effort from work on the ground to producing paper is such a costly endeavor. We don't want to see that costly endeavor also wind up being an impediment to the type of actions that people like the Yuma Valley Rod and Gun Club have been taking over the years to improvement the habitat for wildlife. We want to see if we have to spend enormous hours and money in developing this document, we want to see something that facilitates management and facilitates public enjoyment of these areas rather than presents a barrier to every sort of use that historically has been enjoyed on those lands. Thank you for your efforts to address these issues.

MR. TAYLOR: I appreciate that and I want to assure you our intent is to have all sorts of public input into this process. We agree that these plans take a lot of time and money, and we have a staff full of folks who are doing on-the-ground work as well. That's why we want to make sure these plans are done as well as possible and that's why we're collaborating and coordinating as closely as we are. I think when it's all done, I feel very confident that you all will be satisfied with where the planning efforts goes. We are following a very open process with access issues as well. We're committed to making sure what you just said happens.

CHAIRMAN CHILTON: Thank you. At this point we do have a blue slip from a person who would probably like to present the perspective of the Yuma Valley Rod and Gun Club. That is Mr. Jim Ammons and perhaps we can listen to his comments. You may want to respond to what he has to say afterwards.

MR. AMMONS: My name is Jim Ammons, president of the Yuma Valley Rod and Gun Club from Yuma. I appreciate what Commissioner Melton said and I've got a list of questions here. I'll be looking forward to talking to Mr. Taylor at our meeting when he comes down. One question bothers me personally as well as other members of the community that attended a meeting down there in Yuma. I'd like to have Mr. Taylor's comment on the public record. BLM states that they have the authority to emphasize protection of some or all of the documented wilderness characteristics as a priority over other multiple uses to maintain or preserve wilderness characteristics. Explain how BLM would implement this decision when Congress and the courts have said there will be no more wilderness on lands administered by BLM. That's my only question today.

MR. TAYLOR: The question of managing for wilderness characteristics and how those can be addressed by the BLM when Congress has said and a court case has said there will be no more wilderness. First of all, to address that part of it, Congress hasn't said there won't be any more wilderness. But Congress reserves the right, as you all know, to come in and say tomorrow we're going to make this wilderness or make that wilderness. They haven't said that we should or shouldn't do any. But there has been a court case that was resolved in Utah and a decision that was rendered by our secretary that said we will not have any wilderness study areas result from our planning efforts. And there will not be. What we're talking about are two separate things here. What has been identified in some parts of our land that we're managing are characteristics that have wilderness values, for instance, scenic value or solitude, et cetera. What we're talking

about as we go through the planning effort is how those might be managed. When you say "managed," that's far different than a wilderness designation. I think a lot of this is wrapped around the word "wilderness." It's a very loaded word and has lots of emotions tied around it on all sides. What we're talking is a resource value and as we go through our process, how we manage that resource value. An example that I've used in talking to some folks is we have, for instance, a sand and gravel deposit on BLM land. That's a resource that we have some decisions to make on. Do we extract the sand and gravel or do we extract the sand and leave the gravel, or do we do nothing with it. If sand and gravel deposits happen to be right where an OHV staging area happened to be, where people like to park their vehicles, would we allow that to be the use that would be predominant over the other uses. That's kind of the concept of multiple uses. There is many things that can happen on a piece of ground. Oftentimes one use may take precedent over another use. When we're talking about resources that may exist on the ground that might have wilderness characteristics, how would we manage those? We might be able to have wilderness characteristics for solitude that you make a decision to allow that to be a source we manage for in an area. That wouldn't preclude other things from happening. You may have, for instance, a rancher wanting to build a pipeline across the ground, and he has a grazing lease. You evaluate that. The decision or the evaluation would say if you're going to build this pipeline, you're not going to be having solitude while that's happening. Well, you're going to have a problem with maintaining solitude during that period of time. Doesn't mean you can't do it. It means you have to evaluate these things as you make a decision. So to address the other question regarding the authority we have to make these decisions. Basically, that's where our planning process comes in. The Federal Land Policy and Management Act has required that when we do our planning process we look at all the resource values we have in our public lands and through a public process make recommendation on how those resources would be managed. That's our mandate by the Federal Land Policy and Management Act. The process we follow is the resource management planning effort. So as we go through not just the concerns that the Rod and Gun Club mentioned with regard to these resource values, and as we go through the process with regard to access and the OHV groups and their concerns or cultural resources and the concerns of those that focus on that, we have to address each of the values of these resources and how we would best manage those things. Oftentimes one value may take precedent over another value because even though the word "multiple use" exists, it doesn't mean you can do everything on every piece of ground at all times. As logic would tell you, some uses would impact other uses. It's an evaluation process. There are many, many mechanisms through these processes that allow us to evaluate and make decisions where we wave one against the other and oftentimes mitigate issues on lots of pieces of ground. I don't know if that addresses it. It's kind of getting into the weeds a little bit. When we meet down in Yuma, I think we can get very specific about examples and go from there.

COMMISSIONER MELTON: Let me give you one example when we're talking about some wilderness characteristics. We develop several types of water developments. It doesn't mean we can't put the water in, but it could mean we'd use an underground, which we use in our area because it's a lot better system for evaporation and it's a lot less intrusive to the environment. Is that not kind of what we're talking about when we're talking about dealing with wilderness values or characteristics that we'd utilize the least offensive development if we were going to put it in a particular area?

MR. TAYLOR: In a general statement, yes, that's a correct statement. What we would have to do is if there is a value that's existing out there, any action that we'd taken out there would have to be assessed and addressed and mitigated as much as possible to minimize impacts to that resource. For instance, if you're saying it's a scenic resource, a value of highly scenic area, and we wanted to develop a wildlife water in that area, then what we would need to do is look at the proposal and make sure that the proposal is designed such that it minimizes impact to the visual resource. As you know in working in these projects a lot, that you've done in the past, there is a lot you can do. There are all sorts of designs and mitigating measures that we can employ to reduce those impacts. What we're saying is that when you have a characteristic like that, that's bound to be very important. What we're talking about is making sure that we manage to minimize impacts on that as much as possible.

CHAIRMAN CHILTON: I'd just like to add that it's one thing if you're managing for very restrictive characteristics in a little tiny area. It's something else if you look at the State of Arizona and see all of those enormous sections of the state that are dealing with these plan processes. Your agency is having an enormous impact on Arizona. It has up to this point had some difficulty proving that it was a positive impact for wildlife because the cost to wildlife in this state of dealing with the BLM over the course of the last decade has been enormous. I'm sure you recognize we've had major impacts from things like burros, which we talked about earlier, and on hard working groups like the Yuma Valley Rod and Gun Club, who have expended an enormous amount of effort on trying to do habitat improvements for wildlife. Those improvements have been stalled and delayed and complicated. Then the Department is having to expend a great deal of time addressing these plan proposals. We're very happy to see the change in our relationship that's occurred over the last few years where the process is now at least something we sit down and talk about, getting to a goal that's useful for wildlife and public use, whereas in the past it was not perceived that way. So thank you for that step in the right direction. We are still concerned when we look at a map of Arizona and we see about two thirds of the state looking impacted.

MR. TAYLOR: I appreciate your concerns because all those lands that are under BLM jurisdiction in this state are all of our lands. That's our task, to make sure that we manage those for all of these resources. And your concern about issues in times past, I've been in the state for quite a while, and I know some of those are external to BLM's ability to change. Some were not. Those we've been able to change we've taken a strong stance in trying to change the way some of these things happened. Regarding burros, we were mandated by law to manage those and we've had an awful hard time getting enough resources over the years to be able to adequately manage them. We've had a lot of issues and concerns with the Department about how those animals are managed. I'd like to report back to you that we've been pretty successful over the last year now in getting Congress to allow us to reprogram some funding, to allow us to reach our management levels, which should be by this calendar year. We're taking Burros down to the level they should be right now as we speak in many areas across the state. Again, I appreciate your concerns. I'm a person who loves the outdoors as well, not just BLM. I want to see the lands managed in the right way and we're trying real hard to make sure we can have a good working relationship and continue that relationship with the Department.

CHAIRMAN CHILTON: We really appreciate your coming and having the brave soul to bring all those subjects here. Thank you very much.

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Meeting recessed for a short break

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6. Request for the Commission to Approve the Agreement Between the Commission and the City of Phoenix for an Underground Utility Right-of-Way in Perpetuity at the Ben Avery Shooting Facility, Maricopa County, Arizona.

Presenter: Bob Broscheid, Habitat Branch Chief

MR. BROSCHEID: The City of Phoenix initiated the Lake Pleasant water line route study in the fall of 2000 to locate an appropriate and feasible route with the addition of water lines for the proposed Lake Pleasant Water Treatment Plant to the city's existing water system. Several possible routes for the water line were considered, and the city selected a route that traverses the southern border of the Commission's Ben Avery Shooting Facility and determined that it was the most economical and feasible route. As a result, the Department received an official request for an underground utility right of way to cross the southern border of the shooting range in February of 2002. In October 2003 the Commission determined that the utility corridor, which would include water, sewer and fiber optics utilities, would be of value to the public and for any future development on the Ben Avery Shooting Facility property. During our negotiations the city determined that a utility right of way in perpetuity would be more appropriate and requested this change in the terms of the agreement. The Department has determined that the utility right of way in perpetuity is value of the public and consistent and compatible with the Ben Avery Shooting Facility. The Department recommends the Commission vote to approve the agreement with the City of Phoenix for an underground utility right of way in perpetuity at the Commission's Ben Avery Shooting Facility in Maricopa County, Arizona, and to execute the agreement as attached or as recommended or approved by the Office of the Attorney General.

CHAIRMAN CHILTON: We do have a blue slip from Madeline Goddard from the City of Phoenix who is here to answer any questions from the Commission.

COMMISSIONER GILSTRAP: What I would assume from this map that I'm looking at now is that that dip to the south is designed so that as that interchange is expanded and built that the water line will be out of the way.

COMMISSIONER MELTON: Does that line go up the north and south boundary of Ben Avery also and not just along the east and west boundary?

MR. BROSCHEID: That map doesn't show the Ben Avery boundary, but the boundary here is the west boundary, the southern boundary. And that follows up I-17 to about halfway across that mountain ridge. This development up here is the Pioneer Village.

COMMISSIONER MELTON: Is the easement strictly across east and west, not including the north and south? Where is the north and south boundary at?

MR. BROSCHEID: This portion of the right of way is on BLM lands.

COMMISSIONER GILSTRAP: This is a follow up to Commissioner Melton's question: Does this also take into consideration the potential change of that BLM trail and the potential that the city may want to use growing smarter money to purchase part of that BLM as open space?

MR. BROSCHEID: I met with the city regarding that trail location. Obviously the location of a high value water line and fiber optics along the public access trail was considered in this location. As far as I understand, that trail is still going to be located there on BLM lands. The Department has been working with the BLM and Arizona State Parks to get that project initiated and completed.

COMMISSIONER GILSTRAP: This line as I'm looking at it now, will easements be on the west side or the east side of that trail?

MR. BROSCHEID: It will traverse back and forth I think once across that. The water line will be west of the trail and ends up being on the east side of the trail.

COMMISSIONER GILSTRAP: Because the trail cuts across?

MR. BROSCHEID: Right. It's not a straight line.

COMMISSIONER GILSTRAP: The statement or question for the city is that is this a final map or is this kind of a final conceptual map?

CHAIRMAN CHILTON: For the benefit of our reporter, it's Madeline Goddard and she is representing the City of Phoenix Water Services Department.

MS. GODDARD: As to your question, this is the final map. We are actually in negotiation with the contractor for a guaranteed maximum price on this construction. We are hoping to begin construction in September or October for the whole alignment.

COMMISSIONER McLEAN: I am correct, am I not, that the area in which these utilities would end up does not in any way interfere with the present use and the future use as a shooting facility of the Ben Avery Facility? Correct?

MR. BROSCHEID: No, it doesn't. What it does limit, since this is water, sewer and fiber optics, is prevent any permanent structures from being located on top of it. The location of this easement, however, is right off of the right of way, Arizona Department of Transportation's right of way, which is within the normal set back for any proposed development along that. If you looked over on the other side of the freeway, it has the standard set back. They won't let you build there, in other words.

COMMISSIONER MELTON: As this plan goes forwards, we would still have access to the range? It will not interfere with the range activities?

MR. BROSCHEID: Absolutely.

Motion: Golightly moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THE AGREEMENT WITH THE CITY OF PHOENIX FOR AN UNDERGROUND UTILITY RIGHT OF WAY IN PERPETUITY AT THE COMMISSION'S BEN AVERY SHOOTING FACILITY IN MARICOPA COUNTY, ARIZONA, AND TO EXECUTE THE AGREEMENT AS ATTACHED OR AS RECOMMENDED OR APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Unanimous

7. Consent Agenda

- a. Request for the Commission to Approve the Agreement for Permit with the City of Tucson for the Purpose of Providing Water Service to the Commission's Tucson Regional Office, Pima County, Arizona. The Commission will be asked to vote to approve the Agreement for Permit with the City of Tucson for the purpose of providing water service to the Commission's Tucson Regional Office.
- b. Request for the Commission to Approve the Renewal of Two State Grazing Leases Acquired with the Purchase of the Grasslands Wildlife Area and to Approve the Renewal of the Associated Sub-leases for Grazing the Leased Lands Identified in the Grasslands Wildlife Area Grazing Plan and Cooperative Agreement. The Commission will be asked to vote to approve the renewal of two State grazing leases acquired with the purchase of the Grasslands Wildlife Area and to approve the renewal of the associated sub-leases for grazing the leased lands.
- c. Memorandum of Understanding (MOU) between Arizona Game & Fish Department, U.S. Border Patrol and Arizona State Land Department. The Commission will be asked to vote to approve the Memorandum of Understanding (MOU) for the cooperation in control and closure of unauthorized wildcat roads within five miles of the international border between the state of Arizona and Mexico.
- d. Memorandum of Understanding (MOU) for Granite Mountain Multi Use Area. The Commission will be asked to vote to approve the MOU for the Granite Mountain Multi-Use Area.
- e. Presenter: Eric D. Swanson, Urban Fishing Program Manager. Interagency Agreement for the Urban Fishing Program between the Arizona Game and Fish Commission and the Town of Gilbert for Water Ranch Lake. The Commission will be asked to vote to approve and adopt an interagency agreement between the Department and the Town of Gilbert to conduct an Urban Fishing Program at Water Ranch Park for a period of two years.

- f. Interagency Agreement for the Urban Fishing Program between the Arizona Game and Fish Commission and the City of Surprise for Surprise Lake. The Commission will be asked to vote to approve and adopt an interagency agreement between the Department and the City of Surprise to conduct an Urban Fishing Program at Surprise Lake for a period of two years.
- g. Request for the Commission to Approve a Streamlined and Updated Arizona Boating Accident Report Form as required per A.R.S. Title 5-349(D). The Commission will be asked to review and vote to approve the Department's updated Arizona Boating Accident Report Form.

Motion: McLean moved and Golightly seconded THAT WE PASS THE CONSENT ITEMS A THROUGH G EXCEPT B.

Vote: Unanimous

MR. SHROUFE: Regarding item 7.b., the presenter will be Bob Broscheid. Request for the commission to approve the renewal of two state grazing leases acquired with the purchase of the grasslands wildlife area and to approve the renewal of the associated sublease for grazing of leased lands identified in the grassland wildlife area grazing plan and operative agreement.

COMMISSIONER GOLIGHTLY: The only comment I have is that I was involved in that initially and read the permittee names.

MR. BROSCHEID: The MOI Ranch and Wayne Kregler and Peters. We lease it to the ranch.

COMMISSIONER GOLIGHTLY: What's the nonuse clause in a grazing lease? Is it so many years you can take nonuse? Can you accept nonuse? We already went through this with bison. We talked about it with bison and found out we couldn't do that. What's the status on the nonuse category?

MR. BROSCHEID: It's my understanding that in order for us to maintain that permit and that lease, we have to graze it. Nonuse is not an option.

COMMISSIONER GOLIGHTLY: If we sublease it, then why can't we or why couldn't we subject that lease or that sublease to a bidding process?

MR. BROSCHEID: The intent of this item, you know there are four grazing leases associated with the Cross L and Acote ranches, what we're trying to do is to bring all these remaining two leases up to speed with the other two, which are said to expire in September 2005. So in September 2005 all four grazing leases as they exist with the current sublessee will expire. We do have the option of renewing or perhaps using a bid process.

COMMISSIONER GOLIGHTLY: Okay. So we're renewing it for one more year?

MR. BROSCHEID: Right.

COMMISSIONER GOLIGHTLY: I'd like to talk about that when that comes up for review.

COMMISSIONER GILSTRAP: I understand that one or more of the lessees also has water rights on some of the same water rights we do, on some of those ranches. Am I understanding that there was some transaction with those water rights recently?

MR. BROSCHEID: I'd refer to Assistant Attorney General Odenkirk.

MR. ODENKIRK: The commission owns a portion of the water rights associated with those properties. There is a small percentage, less than a quarter of the water belongs to a separate party. Some of that water has been sold to an individual by the name of Herb Owens, who is in the process of trying to sever and transfer that portion of the water to a property in the Greer area. I'm in discussions right now with his lawyer and with Dave Brown, who represents a number of water right holders in the White Mountain area. We're planning to discuss this proposed sever and transfer to see if we can come to some agreement about it before he files the petition with the Apache County Court. We've been provided a copy of his hydrology assessment on the sever and transfer, and I've asked the Department to review that document and schedule a meeting with me to sit down and talk about how we need to be prepared to respond if we have to object to this petition in court.

CHAIRMAN CHILTON: Of course, with these leases we get assistance on the ground with management of that land. When these leases were acquired by the Department, they were acquired with the understanding that they would be in multiple use and that they would continue in the use the state is leasing them for. They are grazing leases.

Public Comment

MS. BAHR: I just wanted to speak to actually correct something relative to State Trust Land grazing leases. They are not administered the same way as the Federal grazing leases are administered. In fact, in the fall of 2001 the Arizona Supreme Court issued a decision which specifically allows for nonuse of those leases. You can bid or apply for a lease and you can graze no livestock whatsoever. I'd be happy to provide that decision for you and for your attorneys. I just wanted to make sure that you were aware of that.

CHAIRMAN CHILTON: Yes, it does say that, but it also says they consider all of the equities and that they consider the historical use. Yes, they take into consideration other offers, but they look at what they deem best for the trust over the long run.

MS. BAHR: That's correct. That's not what the decision says, by the way. The decision doesn't say that they have to look at the historical use or anything else. The decision says that their responsibility is highest and best use and that they can't avoid that responsibility with arbitrary classifications and that restoration and preservation must be considered as legitimate uses of the land.

MR. BROSCHEID: Acquiring these properties took a lot of negotiations. One of the concerns of the county was that we maintain a livestock grazing operation on those state trust lands. We're just following through on previous Commission direction.

COMMISSIONER GOLIGHTLY: Is that a covenant in our deed?

MR. BROSCHEID: Yes.

COMMISSIONER GOLIGHTLY: It is contingent to be a livestock grazing operation. Couldn't it be a bird dog field trial place?

MR. BROSCHEID: We do have several thousand acres that are included in a special land use permit that we also manage. It's about 4,000 acres of special land use permit and about 3,000 or so approximately is in a state grazing lease. So we do have those lands of state trust that are set aside for that.

COMMISSIONER McLEAN: I would consider a field trial area for bird dogs very seriously.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE RENEWAL OF TWO STATE GRAZING LEASES ACQUIRED WITH THE PURCHASE OF GRASSLANDS WILDLIFE AREA AND TO APPROVE THE RENEWAL OF THE ASSOCIATED SUBLEASES TO THE CURRENT LIVESTOCK OPERATORS.

Vote: Aye Chilton, Gilstrap, Melton, McLean
Nay Golightly
Passed 4 to 1

COMMISSIONER GOLIGHTLY: I would like to explain my vote. I believe there is a better steward out there than the permittees who are currently leasing that. Therefore I vote no.

* * * * *

8. Statewide Shooting Range Project Update.

Presenter: Don Winslow, Education Branch Chief

Written updates were provided to the Commission on major issues in the program prior to today's meeting.

MR. WINSLOW: The update provided covers activities that have occurred since the June 2004 meeting. The Commission may vote to take action on or provide the Department direction on items covered in this update. Assistant Director Macurak was pleased to announce that we have added two public information officers to our staff in the information area. Those individuals will be working on activities such as shooting ranges and shooting sports. We are very pleased to have those individuals, and I'm sure we will have much more information in the press and around

the state about the shooting sports themselves. I'm going to bounce around a little bit from the way I have things ordered here to update you and provide you some information.

The scholastic clay target individual, Anthony Chavez, is on board, as we said in the last meeting. He has just returned this morning from training with the National Sporting Clays Association from his level one training and passed. He is now available to begin providing training throughout the state. In fact, the first training for volunteers will be October 8th, 9th and 10th at the Ben Avery Shooting Facility. Right now we have 30 volunteers who have stepped forward who want to be trained in that particular program to work with youth. Not only has he done the training dates for Phoenix, but he also has dates set in November for Tucson. In addition to that he has announced or will be announcing shortly in March or early April the Commissioner's Cup, which will be the first state tournament and will be held at Ben Avery.

The Archery in Schools Program continues to operate and go well. We will have another training on that within the next six to eight weeks. As I told you before, we have a waiting list of teachers who are training, trying to get into that particular program.

At the Ben Avery Shooting Range the Annie Oakley Program, which is the women's program, have had their thousandth woman come out and shoot. Most of those individuals were people who have never shot before. That program continues to grow and really continues to encourage us to provide more programs like that.

Rio Solado continues to be a situation that we are looking at and watching very closely. As you recall, we had the situation where chemicals were dumped down into the septic tanks system. We have just entered into an agreement with the Arizona Department of Environmental Quality, a voluntary program, so that we can help monitor that. They have asked us to do four things, that is clean out that septic tank situation, find out the water level that is out there, test the leach field, and also possibly monitor some wells. Last night I met with the Tucson group of the Tucson Basin Shooting on Public Lands Workshop. That program continues to move on. There will be another public hearing that will be held probably in August or September in that location. The objective of that program is to create an interagency approach with active public participation to deal with the complex and sometimes controversial issues relating to shooting ranges on public lands in the Tucson area. The intent is to create a strong citizen-government partnership to focus on these issues. The effort is also intended to enhance opportunities, both formal and informal, for safe and responsible shooting. We are actually looking with that group on federal lands for unmanned ranges. We are looking at perhaps a partnership or looking at directing shooters to safe places. The NRA has stepped forward in that particular program and they may even put out gongs or things for noise, if we were to help or we're able to find where we can have safe ranges out there. And that concludes my report.

COMMISSIONER GILSTRAP: Do we need a plan on how to accelerate the availability of the Archery in the Schools Program to teachers and schools? Do you need some help?

MR. WINSLOW: We are going to be looking probably at a number of things. One, we want to hold that program on a quarterly basis. But the other is that it's a fairly costly program. So we

will be looking for some outside funding for that program. It costs us about 2,500 per teacher to equip that school with the program itself. That's one of the areas that we'll be looking toward.

COMMISSIONER GILSTRAP: I would bet that there are organizations like the Yuma Valley Rod and Gun Club that would be a possibility, probably Coconino groups, some of the Red Mountain groups. that might want to step forward on that plan.

MR. WINSLOW: Yes. And we will pursue those.

COMMISSIONER McLEAN: I was at the summer conference of the Western Association of Wildlife Agencies and in talking with some of the other Commissioners, I learned that in a couple of states they are starting to integrate some dog training and field trial facilities along with some of their shooting ranges. Although I think Mike's comment was somewhat in jest, I'm not at all in jest, to have a safe and a good place to train dogs. Frankly, most dog training in Arizona in field trialing is done in informal situations. To be able to bring that into a more formal situation, I think, is just a tremendous idea. I'm not thinking about trying to do it this year, but I am thinking about starting to talk about it.

MR. WINSLOW: That's a very good thought. We will keep that seed watered well.

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9. Memorandum of Understanding with the Arizona State Rifle and Pistol Association.

Presenter: Marty Macurak, Assistant Director, Information and Education Division

MS. MACURAK: In the June meeting you asked us to return here with some draft language to more formalize our long-standing relationship with the Arizona State Rifle and Pistol Association. I will read the recommendation and after the recommendation I have just a very few brief comments before you provide me with direction or any modifications. The Department recommends that the Commission provide the Department with direction on possible modifications to this draft Memorandum of Understanding (MOU) with the Arizona State Rifle and Pistol Association for the operation of the Ben Avery range fund. My comments are that I know several members of the association are here and may wish to make some comment. Additionally, we've discussed these items with the Rifle and Pistol Association and we do ask that the Commission provide us with direction. The Attorney General's Office would ask that you not necessarily vote to accept this agreement today because they would like more time to take a look at it and obviously receive some direction from you as well.

Essentially, the MOU is our overarching agreement to formalize this relationship in terms of the specifics of procedure. Those we would do at an administrative level and certainly if you wish to see those and comment or modify those, we'd be delighted to have you do that. This agreement provides a means for both parties to provide input into how the range money is spent, provides the Department with a little more information in terms of taking a look at the books to see how money has been collected and spent, gives us a system for receiving regular quarterly updates on the status of the range fund, and money coming in and going out. One observation that I'd like to

make before you discuss it is that on the first page of the draft language, item No. 4, we talk about the ASRPA agreeing to indemnify and hold harmless and we believe that would probably be supplanted by item No. 7. That is an insurance requirement that the association already has fulfilled because it's operating out there at the range.

COMMISSIONER GILSTRAP: On No. 6, do I understand correctly when I say that there is opportunity for other retail activities at the range, whether it be at the clay target side or maybe some other vendor.

MS. MACURAK: Yes. That is correct.

COMMISSIONER GOLIGHTLY: With this new language, if we decided we wanted to do something, we present it to the range fund council?

MS. MACURAK: Yes.

COMMISSIONER GOLIGHTLY: Do they have the ability to turn us down?

MS. MACURAK: They do under the language in this agreement. I can tell you that it's my understanding that in all the years of the association between the range fund and the Department, the range fund has only objected to one request from the range master.

COMMISSIONER GOLIGHTLY: I don't know how the Commission feels, but I want to change that. I mean, I think that jointly if we find a need and we initiate the need, those are our funds administered through an agreement. I don't know. Think about that and talk to other Commissioners as you develop your final document and when you forward that to Jim ask for him to review it. My other comment would be on the second page of this document under fund range management. It says on No. 8 that the ASRPA will not commingle range fund monies with BASF monies, and fund books will be subject to an annual independent audit. When you say "will be subject to," that doesn't mean that you're requiring an annual audit? That means to me that if they're subject to, it would be subject to your request.

MS. MACURAK: Yes. That is our intention in the way we wrote this.

COMMISSIONER GOLIGHTLY: I would like to see an annual compilation. I don't think we need an audit. An audit is very expensive. If you're using audit in terms of CPA type language, that's a lot of money.

MS. MACURAK: I understand you saying that you essentially just want a reporting. When we use the word "independent," that essentially meant that the Department could come and look at those books?

COMMISSIONER GOLIGHTLY: No. I think that you have language in here that it's open for us to review them. I saw it somewhere else.

MS. MACURAK: Yes.

COMMISSIONER GOLIGHTLY: They're always open for us to review.

MS. MACURAK: Yes.

COMMISSIONER GOLIGHTLY: I think that somehow with that much money that we're responsible to the legislature, to the people, to whatever responsibilities we have as an agency, with that much money, I think at least we ought to get a compilation at the end of each year by a CPA or someone certified to issue a compilation.

MS. MACURAK: Okay. We can incorporate that language.

MR. SHROUFE: I really believe in reviewing these things. If we're going to adhere to the correct standard business practices, I think we need to be doing audits annually. We have an internal auditor. We conduct audits regularly of all of our funds, our front counters and everything. That's just our general practice, so maybe we could remove the word "independent" and do it.

COMMISSIONER GOLIGHTLY: I just did it.

MR. SHROUFE: But do the audit. Do the audit because I think that word "audit" is, at least to me, necessary because we audit everybody in the Department that's handling money. That's a standard term we use.

COMMISSIONER GOLIGHTLY: In the banking and business world there are three terms they use, "audit," "review" and "compilation." It's just the degree of financial inspection of the books. I think in an audit they go through every single piece of paper and ticket. I don't know. Will you work on that to see what the Commission might want to accept? If you want an audit and the Commission wants an audit, I'm okay with that, but it's pretty restrictive.

MR. SHROUFE: I think, as I indicated, we audit our front counters all the time to make sure the money's being handled properly and we have an internal auditor. I would rather have that be, if we do not subject, an internal audit annually.

COMMISSIONER GOLIGHTLY: Okay. Just change No. 8.

MS. MACURAK: Would it be acceptable, then, to refer to it as a "Game and Fish Department audit?"

COMMISSIONER GOLIGHTLY: Okay. Now you're off the independent.

MR. SHROUFE: Yes. Just get rid of the independent. That means that our auditor that we have on staff will be doing the annual audit.

COMMISSIONER GILSTRAP: I think this line is good to have in there. I think what you're saying in addition to that is that you have your internal auditor do the process that they do. It's

good, but I think that what might happen is the two parties might dispute the internal audit from the Department and we should have them subject to an annual independent audit. I think that's a very important oversight.

COMMISSIONER GOLIGHTLY: Audit by whom? By a CPA?

COMMISSIONER GILSTRAP: Yes.

COMMISSIONER GOLIGHTLY: Then you need to add CPA there.

COMMISSIONER McLEAN: I would simply ask that you look not only at paragraph 8, but also paragraph 11, because you are talking there about a quote, "quarterly certified financial report." I would ask that in reviewing the language that you sit down and chat with the financial folks so that you merge what you're asking for and use those standard audit procedure terms. The auditors have terms of art that they like to use. Then when you bring that back you coordinate that with the administrative folks and bring that all back to us so that there is continuity between some process of looking annually at all the books and some process of looking quarterly at the money that's coming to you on a periodic basis. That's what I'm suggesting.

COMMISSIONER GOLIGHTLY: I think you're hearing that we possibly could use two lines there. No. 8 would be subject to an annual audit internally like Duane recommended and then either require, like Hays wanted, an independent CPA audit annually. Or base that audit from a recommendation from our own auditors. If our own auditors suspect something isn't right, then let him request an audited CPA statement. I don't know. Just massage that. Work it over and bring it back. We want it iron tight. As far as money, we're responsible for it to the state, to our constituents, and to ourselves. We want it iron clad.

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10. State and Federal Legislation.

Presenter: Anthony Guiles, Legislative Liaison

MR. GUILLES: I've handed out to you a very broad based idea for potential legislation for next year that the Department feels merits consideration by the Commission. One of the reasons we need to bring this to you so early is that the Governor's Office asks us for a listing of possible potential legislation, usually by mid August and that due date is next week. They just like to get an idea of where we may be headed, which bills the Department might be looking at. These are some of the bills that the Department believes merit consideration. I'd also like to preface with the fact that it is going to be a budget year again this year, and there possibly may be items coming out of tomorrow's meeting on the 10% ruling that may require statutory changes as well. The Department is bringing four items to the commission. First is the immunity language legislation that the Commission agreed to last year. Due to time constraints we weren't able to run the final bill that was agreed upon, so that language has already been drafted and is ready to go at this point. The next item is wildlife feeding. This is another issue similar to immunity that

came out of the Sabino situation. This is something the Department believes may or should require a statewide feeding ordinance. Nothing has been drafted at this point. It's very broad. Without the Commission's direction to proceed, we haven't drafted anything. What we would do is put together a working group with probably both internal and external constituents and draft some language and bring that back to the Commission for further approval.

COMMISSIONER GOLIGHTLY: What we're looking at here is what we tried to run last year; right?

MR. GUILLES: In terms of the immunity legislation?

COMMISSIONER GOLIGHTLY: Yes.

MR. GUILLES: Yes. That's the exact same legislation.

COMMISSIONER GOLIGHTLY: I think the conversation you and Hays had was to get out and get support early on. What we would like to have from you is some chronological events that these things need to happen at week No. 5, week No. 4, week No. 3, so that we've got somewhat of an idea as a Commission what support we need. We can sit down with the Cattle Association, for instance, and try to work out some of their issues so that we don't walk into that hearing room, for instance, and be surprised.

MR. GUILLES: I think the Department tried to do that prefacing before the session actually begins to have some sort of a consensus worked out, at least what we can see of any problems that may be brought up in terms of legislation. The legislation that was brought up last year in terms of immunity wasn't a Department sponsored bill. That was sponsored by Senator Helen. I'd be happy to. if the Commission gives direction, to proceed on any of these matters of legislation. I'd be happy to draw up a calendar saying this is what we have, constituent meetings, meeting with legislators. After the general election in November we don't know who the leadership may be at this point in certain cases. But I think we could work around that and come up with some sort of calendar.

COMMISSIONER GILSTRAP: I think you alluded to it in your wildlife feeding bill, the same kind of thing, that you'd get together a working group.

MR. GUILLES: Correct. As you recall with some of the meetings we had, this is one of the issues that came up. Certain representatives of senators were going to have meeting groups. It seems like they've kind of lost a little bit of focus with the election year. Maybe we can jump start if that's what the Commission desires.

COMMISSIONER GILSTRAP: We were going to take the initiative on the wildlife feeding. That's really one that if we don't pursue it, it is going to fall off the side.

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Meeting recessed for a five minute break

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COMMISSIONER McLEAN: My only comment is if wildlife includes our feathered friends, and I think it does, everybody in my neighborhood violates that statute with a hummingbird and some kind of a block feeder. I think we simply have to recognize that there has to be some distinction or I think we need to seriously look at that.

MR. GUILLES: Understood. I think the Department has made that clear previously to the Commission to probably exclude the feeding of birds from this. We'll take that into consideration.

The third item is a license revocation and civil process enhancement. This is a combination of a number of items that have come either from Commission recommendations or from the Law Enforcement Branch. Some of those things are that we would be looking at possibly to automatically extend license revocation for people who do not pay their civil assessment. Right now if the civil assessment is not paid, they are able to acquire a license in certain instances. Another item is to update the civil assessment amounts for unlawfully taking or possessing wildlife to reflect the current economic value. We'll be looking at some of the other western states. They do have consideration for trophy animals and different variations in terms of the civil penalty. Another thing that we'd look at is to define the license revocation applicability to affect juveniles. I believe this may have been one of Commissioner McLean's recommendations. So these are some of the main items that we'd be looking at and coming back to you with details and probably draft language at that point.

The fourth item is a possible increase to the watercraft registration fees. We've had comments from legislators that some of those fees may be too low and they would be happy to possibly run a piece of legislation for us. We've also been in discussion dealing with legislation on the Lower Colorado Multi-species Conservation Plan and providing some dedicated funding from some of those recreational users who do use the Colorado River. There is draft language the Department is reviewing at this point in time. I believe it would probably bring in I think about \$250,000 from certain fee increases. So we'll bring back to you a comparative analysis of other fees for registration across the West and then also possibly to provide the dedicated funding for the Lower Colorado River Plan. Those are the four items that we bring before you today. I guess the Department's recommendation would be to have the Commission direct the Department to come back with draft language for these items and a more detailed analysis of those.

Motion: Gilstrap moved and McLean seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO COME BACK WITH DRAFT LANGUAGE FOR THESE ITEMS AND A MORE DETAILED ANALYSIS.

Vote: Unanimous

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11. Conservation of the Black-footed Ferret.

Presenter: Steve Goodman, Nongame Specialist, Region III

MR. GOODMAN: I'm a black footed ferret supervisor out at Aubrey Valley for our black footed ferret reintroduction project. Today I'm here to give you a brief history and update of the project and let you know where we are now and where we're heading. I wanted to give you a little bit of life history notes on the black footed ferret. It's the only native ferret in North America. It's Latin name is *Mustela Nagripies*. It's approximately 20 to 24 inches long including its tale and weighs approximately two and a half pound. It's diagnostic characteristics are black face and black tail. They live three to six years but on average in the wild approximately three years. They're part of the Mustelid family, which includes wolverines, badgers, skunks, weasels and river otter. They're primarily solitary and nocturnal. They typically breed in March and April and have between three and five kits. They have many predators, including coyotes, foxes, bobcats, great horned owls and other raptors and occasional bull snake. Black footed ferrets require relatively large expanses of short grass prairies with some mixed grass prairie intermixed. They are also almost totally dependent on large, dense populations of prairie dogs, which make up over 90 percent of their diet. Originally they occurred all the way from Southern Canada down into Northern Mexico. Meeteetse, Wyoming was the last known population prior to reintroduction. They were considered by the U.S. Fish and Wildlife service as endangered in 1967, and they were officially listed in 1973 under the Endangered Species Act. They were one of the first 14 mammals under the Endangered Species Act. They were considered extinct in the late 1970s. Then in 1981 a farmer's son's dog actually brought back a dead ferret to the farm house. That was back in Meeteetse, Wyoming. Subsequently from that area the last 18 black footed ferrets were recovered in the mid 1980s and they were brought into captivity for captive breeding. Since that time, over 3,000 kits have been produced from those last recovered. I believe actually it was only seven of the ferrets that were used for breeding.

There are currently eight reintroduction sites in addition to the one in Aubrey Valley, Arizona. There is one on the Colorado-Utah border, three in South Dakota, one in Montana, one in Wyoming and one in Mexico. Arizona was the fourth site on line in 1996. Aubrey Valley starts just a few miles west of Seligman. Our population was established in 1996 under the endangered species act section 10J as a nonessential experimental population. I wanted to let you know that the entire funding for the project comes from Federal and State wildlife grants as well as the Heritage Fund match.

I guess the question is why or how does a nonessential experimental population help us. What it does is it allows more management flexibility. In essence, it allows the current land management activities to continue. Going along with that same thought, it protects local government and private interests. And it does protect the species status, although less. Essentially, it downgrades the species from endangered to a threatened status. What's neat about the Aubrey Valley reintroduction project is we're the only one in the entire country of the all the reintroduction projects entirely on state, private and tribal lands. We have several partners in this venture. Of course, U.S. Fish and Wildlife Service is the lead and they also provide us with our captive ferrets for breeding and for eventual release. Also, another partner is the Walapai Nation, the Arizona State Lands Department, the Navajo Nation, Cholla Cattle Company and the Phoenix Zoo. Each of these partners make up our working group, which meets once every year in January.

We have a quarantine facility that houses up to 600 prairie dogs. We quarantine all prairie dogs from other sites for 21 days, basically, to protect Aubrey Valley from any outbreaks of plague, and also to protect the ferret population from plague that these prairie dogs may be carrying. We currently have four in use. Each pen has four sections that can hold one ferret. So we have a capacity at this point of 16 ferrets that we can precondition or breed for eventual release. We're currently in the process of building two new pens on site.

I guess the big question is what's it going to take to downlist this species. Per the recovery plan by the U.S. Fish and Wildlife Service as amended in 1988, across all the reintroduction projects we're going to need 1,500 individuals across 10 reintroduction sites. Each site will need to have a minimum of 30 breeding adults which equates to 20 ferret families. And this will need to occur by the year 2010. What is Arizona's goal? Well, our goal is a free-ranging, self-sustaining population. We want a minimum of 30 breeding adults and a minimum of 25 to 30 families. Also a parallel goal with this project is that we want to have no negative impact to local economy and local life-styles. So what are we doing to get there? We have several components, several things we do out on the project to meet our goals. One is the care and husbandry of ferrets and prairie dogs. We do on-site breeding of ferrets. We do prairie dog surveys annually. We also have an intensive monitoring effort. Most of that is done via spotlighting at night. Also, we contribute to the national program with their research. As I mentioned, we do annual prairie dog surveys. We've been doing surveys on standard 384 transects since 1992. This is the longest running survey data of any of the reintroduction projects. This is important for two reasons. First, it tells us where the densest areas are where we can put ferrets. It also tells us Aubrey Valley is capable of sustaining a ferret population. The prairie dog data, we extrapolate that. What we get out of that is what's called a "ferret family rating," which is the minimum amount of ferrets that Aubrey Valley reintroduction area can sustain. We started reintroducing in 1996, and we were above the minimum. When we started off, the numbers were low, but still above that minimum. Then we rose very high and sank back down a little bit, but still quite a bit above the minimum level. What's really significant about 2002 is that that was one of the worst recorded droughts in history. So this shows you that ferrets can still continue to survive even in this high environmental stress. In 2003 there was quite a few prairie dogs out there and 2004 the numbers are about the same.

Another important component of what we do is we contribute to the national project. We were the first site to construct and utilize on-site preconditioning pens. We were also the first site to have production of kits in these pens. We're currently the only site to experiment with spring releases of pregnant females. We contribute to the national research through plague research and plague vaccine research and in the fall we plan on having some researchers come out and do some genetic testing on our ferrets. Another component of what we do is volunteer recruitment. We have lots of volunteers that help us with spotlighting and pen maintenance. In 2003 we had over a thousand volunteer hours. Also, we do a lot with outreach. We've been featured on the National Geographic national special twice, the Arizona Game and Fish Department's Wildlife Views, regionwide newspapers, and numerous interviews. Our staff goes to fairs and schools to make presentations on black footed ferrets.

I guess another big question is whether we are succeeding at this point. I'd like to say a resounding yes at this point. In 1996 was the year we first released ferrets. In 1998 we documented the first short-term survival out in the wild of ferrets, which is greater than 30 days surviving in the wild. In 2001 we documented the first long-term survival, which is greater than 365 days out in the wild. Then in 2001 we discovered our first wild born kits. In 2002, a drought year, we continued to find some wild born kits as well as document additional long-term survival. So that's a very good sign for us in the future. 2003 was really our break-out year. We discovered 14 individual wildborns and a total of 24 individual ferrets. We estimated at least 5 ferret families and potentially up to 10. One thing to keep in mind is because we can't drive off the road in Aubrey Valley, we're kind of limited to where we can survey. So I estimated maybe we're only surveying a third or a quarter of the area. So our additional survey efforts are going to have to start including more backpacking to try to cover more of these areas. And also in addition to those 24 total we found in 2003 that we identified, we actually had 63 unidentified ferret sightings as well, which I'm sure some of them were the same and I'm sure also some of them were different. 04 we haven't started our official intensive spotlighting to date, though we've done a little bit. And we have found some wildborns and some other surviving ones, ferrets that we released in the spring. So it looks like 2004 might be another good year for us. We have a record long-term survival of a ferret of 823 days in the wild. This ferret I believe was not seen for over a year and all of a sudden it just popped up. That's actually a good sign, but also shows how difficult it is to monitor these critters. We now have our third generation of wild ferrets out in Aubrey Valley. We continue to have a stable black footed ferret family rating. Since 2003 our ferret allocations from the U.S. Fish and Wildlife Service have increased.

So what are our future plans? Well, of course, we want to keep monitoring and begin trying to estimate our population. We want to continue with on-site breeding and preconditioning. We want to contribute to the national research on plague and genetics. And in the future, we'd also like to remap prairie dog towns to see if there is additional habitat within our reintroduction area that we can put ferrets. Also the plans in the future include investigating potential other reintroduction sites. In closing I want to read this quote from Mike Lockhart, who is the national black footed ferret recovery coordinator for the U.S. Fish and Wildlife Service. He says that recent progress in population establishment in Arizona is highly encouraging. Improved success has elevated the overall priority of the Arizona program. This is significant. I just met with Mike out in Aubrey Valley early this week and he told me that we'll probably be getting a record amount of ferrets this year based on our dedication and our habitat and our willingness to contribute to research, as well as some other sites are having some difficulty. So we're probably going to get 67 ferrets this year. This is going to be a very good year.

12. Litigation Report.

A copy of the Litigation Report was provided to the Commission prior to today's meeting and is included as part of these minutes.

MR. ODENKIRK: There is one item that I presented in Executive Session that will need some decision by the Commission. There are a couple other matters that we did not get a chance to speak about in Executive Session that may also necessitate some action on behalf of the Commission, so I would ask that when we are done with this item that the Commission come

back to it at some later point after we've had a chance to discuss the other matters in Executive Session. The litigation report is made available to the public. It is available at the back of the room if anybody would like to review any item.

I will proceed with the one item from Executive Session, which is the Montoya v. Manning case. This is the case involving a challenge to the Commission's regulation that restricts nonresident access to hunting permits. The Court issued an order on July 12th of this year finding that the Commission's regulation is unconstitutional and issued an injunction against further enforcement of the regulation as it applies to bull elk and deer north of the Colorado River. The Commission is faced with a decision as to whether to appeal that order. The Commission has 30 days under the Federal rules to file a Notice of Appeal. As a side note, the Attorney General's office has filed a Notice of Appeal in order to protect the Commission's right. The 30 days expired yesterday. In order to be able to protect the Commission's right to file an appeal, if they so decide, we went ahead and filed a protective notice. The Commission is faced with a decision to file that Notice of Appeal and proceed with the appeal. There are some difficult issues with this case. I'll summarize very briefly the legal concerns with proceeding with an appeal. The first issue is the standard of review. Let me address the test that the Commission has to deal with in this case, which is a strict scrutiny test. Under the Commerce Clause cases, whenever The Court finds that state regulation impacts interstate commerce and the regulation discriminates against nonresidents, the Court imposes a strict scrutiny standard, which requires states to show that their regulation is the least restrictive regulation available to meet their legitimate interest. The Court found that we did not meet that burden in this case. It's a very difficult burden to meet and very few regulations, whether in the Congress clause context or in other context, satisfies the strict scrutiny standard. For that reason an appeal is not likely to be successful at the Court at the Ninth Circuit. The second reason that an appeal will be difficult to prevail in this case is that the issue before the district court is one of fact and primarily one of a factual determination made by the Court. On appeal, a Court's factual finding are given deference, meaning that the court of appeals will not review the issue anew or on its own review of the issue. It will give some deference to the findings of the district court in its review of this case. Third is that the Ninth Circuit has already reviewed this case once and made a determination that the regulation impacts commerce. In that decision it was not favorably disposed towards the state's regulation. Given that it is not favorably disposed to this regulation, my feeling is that the Ninth Circuit will not view this case favorably. For those three reasons it is the recommendation of the Attorney General's Office that the Commission not seek review of this order. Let me make one other point so that it's fully understood that the Court of Appeals does not have within its authority to reconsider the decision that it made previously concerning the Commerce Clause. That issue has already been decided by the Ninth Circuit. Any further review at this point would be limited to the Judge's decision that was made in the July 12th order and would not allow for further reconsideration of the question as to whether or not this regulation affects interstate commerce.

If the Commission would like to discuss this case further in Executive Session, you can do that, but I have no further information or comments to make in Executive Session on the Montoya case. I do have to discuss some other matters on other cases in executive session.

COMMISSIONER McLEAN: In addition to the issues directly involving our vote on filing of a Notice of Appeal, is it not true also that the plaintiff in the Montoya matter has also filed a

Notice of Claim against the Department and the State with regard to attorney fees in the amount of a third of a million dollars?

MR. ODENKIRK: That is correct.

COMMISSIONER McLEAN: And if we proceed with a further appeal in this matter, we run the risk of exposing the State of Arizona and this Commission and this Department to yet further Notices of Claims for attorney fees should we be unsuccessful in prosecuting that appeal; is that correct?

MR. ODENKIRK: That is correct. The one thing I did not further state in the Executive Session is that we may have an obligation to submit some form of bond on appeal to ensure that we are able to pay these costs if we're unsuccessful in any appeal

COMMISSIONER McLEAN: What is the Attorney General's feeling with regard to the continued prosecution of an appeal from the district court's last order?

MR. ODENKIRK: This case has been reviewed by the Civil Appeals Section in the Attorney General's Office. The Civil Appeals Section falls to the Solicitor General's Office. The Solicitor General's Office is under the Attorney General and has the responsibility to review any decisions or any proposals to appeal any case, any civil case, in the Attorney General's Office, whether it's an adverse decision or a decision that the state has prevailed upon. The Civil Appeals Section is involved in any review of the merit of appeal and any documents and pleadings filed in that appeal. The Solicitor General's Office takes upon this role to review these matters to ensure that the State of Arizona takes consistent legal positions on issues on appeal and that the Solicitor General's Office considers how adverse appellate decisions may affect other interests that the State may have. Appellate decisions typically are reported decisions and are used as precedents in other cases. So the Solicitor General is concerned about how any adverse decision may affect the interests of other aspects of the state.

COMMISSIONER McLEAN: What has been the recommendation of that body?

MR. ODENKIRK: The Solicitor General's Office recommended against an appeal in this case.

COMMISSIONER McLEAN: One of the often unstated reasons why that review process is done is so that lawyers outside of the Solicitor General's Office, that is, lawyers who have been involved in the trenches in litigating these matters, like yourself and your predecessors, and so that State agencies and Commissions and clients such as the Department and this Commission have a review of that process by a totally disinterested and noninvolved group of lawyers; is that correct?

MR. ODENKIRK: That's a fair way to describe the issue. In the opposite way, sometimes the lawyers within the Civil Appeals Section or the Solicitor General's Office can learn about a case from the lawyers who have worked it for many, many years to gain a different perspective or need to file an appeal against the wish of the Solicitor General's Office. The lawyers within that office have worked very closely with us on this case and have provided a tremendous amount of

assistance in developing our appeal, the initial appeal, and in helping us with the summary judgment motions. They have been very much involved. They have been dispassionate and objective in their review of these matters. I trust their recommendation in this case.

COMMISSIONER McLEAN: In all fairness now because when we look at the scales of justice, there are two sets of balances there, and I don't intend to dwell on negatives, but there are some positive reasons. What are some reasons why perhaps this Commission should direct you to go forward with a Notice of Appeal from the District Court in this case?

MR. ODENKIRK: If there is a positive, it would be the fairly slim chance of prevailing. I guess that is a positive. There is always the chance that you can win. But that could be a negative just as well.

COMMISSIONER McLEAN: But if we prevail no matter how slim or how great our chances are of prevailing, we are not going to overturn the original Ninth Circuit decision that says that the Commerce Clause applies to the 10 percent cap limitation in Arizona as provided in the current rule. Isn't that correct?

MR. ODENKIRK: That is correct.

COMMISSIONER McLEAN: You said it, but I want to be sure I understand and everybody listening understands that this is not the opportunity to take a second bite at that apple. Right?

MR. ODENKIRK: With regard to this set of facts and this regulation, the law of the case is that that regulation affects commerce. The Ninth Circuit will not reconsider that issue.

CHAIRMAN CHILTON: My only interjection here is I think it's not a chance for us to take a second bite. It's a chance for us to be bitten twice.

COMMISSIONER GILSTRAP: I certainly respect Commissioner McLean's series of questions. There was only one correction I'd make. It's actually \$335,000.

Motion: McLean moved and Golightly seconded THAT THE COMMISSION DIRECT THE ATTORNEY GENERAL TO WITHDRAW THE NOTICE OF APPEAL PREVIOUSLY FILED IN THIS CASE AND TAKE NO FURTHER ACTION TOWARDS PURSUING AN APPEAL OF THE DISTRICT COURT'S MOST RECENT DECISION.

CHAIRMAN CHILTON: I think this is probably subject to further discussion. Well, I'd just like to say it does not mean that we aren't going to take other action other than that appeal. It doesn't mean that we're not going to try to address the issue, it just means that this is just not the avenue that your motion sees as having any positives for us. Right?

COMMISSIONER McLEAN: I tried to craft a motion that was as narrow as is possible. It is directed only towards that notice that has previously been filed on a ruling that was most recently made by Judge Bloomfield. It is only as to that notice and that ruling that I intend to direct or vote to direct that we not pursue. I believe there are a number of other aspects, including a

number of agenda items tomorrow that will actively pursue this same issue. I want to go into those at great length. I would also like to say that when in a few moments I vote aye, it is not with a good taste in my mouth, but it is with a very bad taste. It is an alternative which I believe is the only one which as a Commissioner can I in my public trust of this Commission make.

Vote: Unanimous

MR. ODENKIRK: I know it's late. I guess I would like to end on a bit of a positive note, that is with regard to the Page Springs litigation. We've had a lot of difficult things to deal with the last month and a half, but within that period of time we also had a success, and that is the settlement agreement is finalized in the Page Springs case and a Motion to Dismiss was filed and granted by The Court. So with regard to that we feel it was a successful completion to that lengthy litigation. We look forward to being able to work well with the plaintiffs and resolve any issues that arise in the future without having to go to Court.

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13. Call to the Public

There were no requests from the public to speak.

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14. Director's and Chairman's Reports

CHAIRMAN CHILTON: We had lots of meetings and dealt with a lot of issues during the last month, and everyone's already aware of those. I didn't go to any other meetings except the telephonic ones and answered a very large number of phone calls.

MR. SHROUFE: Since the last Commission meeting I spent one day touring the various allotments on the Kaibab Forest in the southern district with lessees, Rocky Mountain Elk Foundation, and Forest Service employees. Some of those allotments out there may be up for sale. Also looked at cooperation from the lessees on how we could improve wildlife habitat, retain those allotments for grass banks and for the needs of other lessees of the forest. I did take a couple days off for vacation. I attended the Western Association of Fish and Wildlife Agency's (WAFWA) meeting with several of our Commissioners. I think we had three of the five up there at parts of the time. I spent time getting ready for a lot of Commission conference calls. The other thing I wanted to report is on August 12 the Fish and Wildlife Service released a news release, and it states that the black tailed prairie dog will be removed from the candidate species list, which means that all the work we've been doing with the 11 states that have or had black tailed prairie dogs has paid off. Reassessments of the population and determinations made by the service that the population was much greater than what they thought and that the natural things that are going on out there, the drought and the plague, isn't really a detriment to the total population of black tailed prairie dogs. That's something that we've all been working hard on. That was the topic of the WAFWA along with the sage grouse. Sage grouse is the next species

that we are putting together conservation assessments plans for to see if we can keep them from being listed also.

15. Commissioners' Reports

COMMISSIONER McLEAN: I've spent the last two months on the telephone, reading and responding to E-mails mostly on the 10% cap issues, and on the issues involving additional tags for deer north of the river and for premiere elk hunts. I along with Duane attended the WAFWA conference. I met a lot of Commissioners and Department personnel from other states, learned how other Commissioners in other states do things. I talked to one Commissioner who has talked to his Commission and their Department into putting in dog trial runs as part of their shooting ranges, including water retrieve runs and those kinds of things. I got to tell you, especially if we can do it in grassland areas, it's really a neat subject to think about. I attended some of the other public hearings, especially the one down in the Mesa Regional Office. I think we had some very good attendance and some very good response by sportsmen.

COMMISSIONER MELTON: I also had quite a bit of conversations about the 10% cap and the lawsuit and that kind of issue. I attended a couple Yuma Valley Rod and Gun Club meetings plus the Board meeting. We had three other people attend from the Department. We had about 150 members there. I had an opportunity to go to the Trappers Convention, picked up the president of the National Trappers Association. We discussed a lot of issues on the best management practices. The International Association of Fish and Wildlife are working on trap testing throughout the country. National Trappers Association provided a proactive video and I have a copy of it. They are becoming proactive with international organizations to be able to stop the date line. Also at our flight up on the rim, it was a very nice flight in a helicopter. I flew with the door open pretty close to the ground, so it was quite an experience. We saw a couple fires. That GPS is quite efficient.

COMMISSIONER GILSTRAP: In addition to the many phone calls, what they call meetings, we did have some organized meetings. The committee met and discussed the headquarters potential relocation. I attended the WAFWA meeting. As Bill identified, it's an excellent time to interchange with other Commissioners, other members of the Department. You find out that even though we are not happy with all the things that we do in Arizona, the larger picture is we do more things right than wrong, and we're still looked at as one of the leaders in the West and the nation in the way we conduct our wildlife management programs. I spent a couple of days in Las Cruces, New Mexico, at the quail seminar that New Mexico had, which is very similar to the one we had a year-plus ago. In fact, it included many of the same faculty members. There again, as far as quail management in New Mexico, they're embryonic. It was good for New Mexico to put quail on the list of wildlife species that deserves attention. Hopefully, because many of our problems are synonymous, we can also work together in seeking solutions to improved habitat and improved number of quail.

COMMISSIONER GOLIGHTLY: I also attended the Wildlife Conference in Idaho. It was a successful Commissioner's forum with a little over 50 Commissioners in attendance. The Idaho Chair of their Commission did a great job of structuring the meeting and allowing us to utilize

the available time we had. I worked on shooting range issues here in Northern Arizona, spent quite a bit of time on that, in fact, and then also attended yesterday's Commission meeting.

MR. SHROUFE: As Commissioner Gilstrap indicated, Arizona Game and Fish is noted for its wildlife management. I also wanted to point out that I think you're taking care of the Commissioners forum for the next couple years. We're not only just a leader in management; we're a leader in the Commission itself. I think that's a very special designation.

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16. Approval of Minutes

Motion: Melton moved and Golightly seconded THAT THE COMMISSION APPROVE THE MINUTES FOR JUNE 9, 2004, AND JUNE 18-19, 2004.

Vote: Unanimous

The minutes for May 14, 2004, were signed.

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Motion: It was moved and seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed
Meeting reconvened

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Motion: Golightly moved and McLean seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting recessed at 6:00 p.m.

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Saturday, September 14, 2004 – 7:00 a.m.

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CHAIRMAN CHILTON called the meeting to order at 7:00 a.m. Members of the Commission and Director's staff were introduced. The meeting followed an agenda dated August 10, 2004.

The Commission resumed its executive session discussing the directors' goals and objectives.

Awards and Commissioning of Officers

There were no awards or commissioning of officers at this time.

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1. Consideration of Proposed Commission Orders 5, 6, 8, and 9, 2005 Spring Hunting Season.

Presenter: Brian Wakeling, Big Game Supervisor, Game Branch

MR. WAKELING: This morning I will be presenting the Department's recommendations on the hunt package, specifically, Commission Orders 5, 6, 8 and 9. Each of you have received a packet that not only has the spring hunt package, but it's also got some information regarding the waterfowl recommendations, which will be presented as part of agenda item 2. Within that package, the initial part is the Commission memo that you were sent earlier. There is also a copy of the few slides that I will be presenting this morning as part of the information in this package. Finally, there is a package that follows the page called "Certification Copy". This is the information that you will be acting on for Commission orders 5, 6, 8 and 9 this morning.

With that, I will step into the presentation of Commission order 5, our spring turkey. Looking at the historic data on the spring turkeys and "Concept Dawn", generally speaking, we have actually put more hunters in the field since about 2000. Although hunt successes remain variable, it has stayed within the range of what it has been historically, and it is currently at the high end of what our management guidelines would manage for. This past year, the statewide spring hunt success was nineteen percent. The application rate for this limited opportunity has increased rather substantially. This last year we had over sixteen thousand applicants for about fifty-three hundred permits. Looking at how we are doing in relation to our strategic objectives in the strategic plan, we manage for a harvest of between sixteen hundred and two thousand birds annually. This last year, concluding with the spring of 2004, we had harvested just over seventeen hundred birds. The spring harvest proportion of that was about eight hundred and eleven. The fall harvest accounted for the remainder of that. We also were just below our guideline or goal on the number of hunters that we would put in the field, and the accomplishment or the portion that was provided by the spring hunt was just under forty-two hundred hunters. We are substantially below the number of hunter days that we have managed for, but a lot of that has to do with the fact that our hunters are fairly successful. About three-fifths of that is accounted for by the spring hunt. The 2004 general spring turkey season produced a harvest of eight hundred and twenty-nine birds. The harvest steadily increased after we went to the new management score card and the new management guidelines that we have used for turkeys since about 1997. It increased steadily until 2001. We did have a little bit of a dip, but our recommendation in 2005 is for five thousand two hundred ninety-two permits, which is an increase of a hundred and fifty from last year. We are recommending the season run from April 22 to May 19, except in those units where we have stratified hunts. In those stratified hunts, the first season will run April 22 to April 28, with a week break, and then running May 6 to May 19. The second stratified season dates are April 29 to May 19. Our juniors hunt recommendation is virtually identical to last year, with the same units and the same number of

permits being recommended. We are also recommending that we continue to maintain the spring hunt opportunity for Gould's turkeys within the Huachuca Mountains in Unit 35A. We are recommending two permits there as well. We didn't receive any comments from the public regarding our recommendations on the spring hunt structure. We did take this information to the public throughout the winter at the same time that we took the information on the hunt structures and recommended changes for the fall season that we shared with the Commission in April. The Department recommends that the Commission vote to adopt Commission order 5, spring turkey, as presented.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 5, SPRING TURKEY, AS PRESENTED.

Public Comment

MR. DON MARTIN: I represent the Mohave County Longbeards, the only chapter in Mohave County for the National Wild Turkey Federation. Our comments concern the juniors hunt. As you know, we believe that the future of all hunting, including turkeys, is with the youth. We noticed that the turkeys are the only big game species where the hunt is set at the same time as the general hunt. The purpose of the general hunts in the past, by moving them before, was to take away the competition between father and son, father and daughter, mother, uncle and so on, to get that junior out there in a relatively unencumbered situation. We have accomplished that on all the hunts except the springs juniors. These juniors hunts are at the same time as the regular hunts. We also believe that if you move that hunt back just a week, it would give the juniors the opportunity to hunt without having to worry about dad and Uncle Bob. Biologically, it would have no effect. Based on the strategic turkey plan, it would not affect that. The harvest level would probably be pretty close, but it would give the kids a better opportunity, and a quality opportunity. We would also encourage the Department to look in the future at increasing junior turkey hunting opportunities. We think that, with fifty-three hundred permits being offered this year, and five hundred juniors, and there was, I don't think there's five hundred, but were three hundred and forty people, I think, applied. It was over-subscribed for the juniors. So there are juniors that want to hunt that aren't getting the tags. So we would encourage the Department to look at expanding that.

COMMISSIONER GILSTRAP: Lets see if I understand correctly what Mr. Martin was suggesting. Was he suggesting moving the general hunt back a week?

MR. MARTIN: No, sir. What I am suggesting is that the juniors only turkey hunts start a week before the general hunt.

COMMISSIONER McLEAN: You are talking about adding on a week, and adding at the front end, right?

MR. MARTIN: Right.

COMMISSIONER McLean: And are you talking about cutting them off at the end of that week? Or are you going to let them hunt the regular hunt too?

MR. MARTIN: No. We are not suggesting that you allow them to hunt on the regular hunt.

MR. WAKELING: The suggestion that Mr. Martin has provided is something that the Department has received in the past. The concerns we have regarding moving those juniors hunts to the week prior is this. There was a time when Arizona had a winter, and we suspect that at some point in time it will return. One of the real tricky things about trying to manage the spring hunt opportunity is trying to predict what the weather patterns are going to be. We have tried to keep the juniors hunt on the Kaibab at a time that is early enough in the fall, that weather doesn't play a big role in that hunt. We have some of the same concerns regarding the spring turkey hunt. Late winters, late snowfalls, certainly have the potential to confound that. Additionally, currently the way their hunt structure is set up, they have in most cases four weeks; in the stratified hunts, they have three weeks to hunt. They often don't have a great deal of competition later in those seasons. I am not sure I fully understood; but if it was just to set aside a single week, they would actually be losing a few days of opportunity.

CHAIRMAN CHILTON: We do, however, appreciate the thought, and we agree with Mr. Martin that the youth hunting opportunities are critical to building a base for the future. So keep producing these great ideas, and we will come up with something that works for you and works for the turkeys at the same time.

Vote: Unanimous

MR. WAKELING: The next Commission Order No. 6, javelina. Looking at the data historically, we have been reducing hunter opportunity. We have been doing this, again with the guidelines, trying to keep hunt success, being one of those guidelines, at a level accepted by our hunters. Hunt success has continued to vary within the range of what we have seen historically. The harvest rate has been influenced by the number of hunters in the field. When we look at the application rate versus the number of permits available for general javelina, we have actually increased the application rate and actually see that the number of permits, the number of first choice applicants, has exceeded the number of permits available. The first time was in 2001, but that has again occurred this year, with an increase. Our HAM hunters, they have similarly seen a decline in opportunity. For this season choice, the application rate has not exceeded the total number of permits available. With archers, again the number of hunters has declined somewhat, but not as much as with the general season. Hunt success has continued to maintain the range in which we have observed it in the past. Looking at the application rate for this season choice, it again is very similar to what we have seen in the general season, where the number of first choice applicants has exceeded the number of total permits available. Looking at it strategically, this is where we stand. Our harvest has been very close to, just under, the low end of what our plan objective was. Similarly, with both the number of hunters and hunter days, they have exhibited a similar response.

The Commission has directed us to offer juniors hunting opportunities at levels similar to what we have in the past. We have also done that in this case, and this year juniors' permits comprise two percent of the overall permits offered. We had three comments from the public as we were going through the season structure comments. One was that there should be a break between the HAM and the general season hunts. The Department's response is that the hunt success that we

have observed has been consistent. We don't believe that this is a biological impact of the population. We also had some comments about reducing javelina permits, and we did adjust those where it was appropriate, based on the guidelines. Finally, we had some concern about undocumented aliens crossing the border and interfering with javelina populations, but when we compared biological data there with other areas, it very similar. We would recommend that the Commission vote to adopt Commission Order 6, javelina, as presented.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 6, JAVELINA, AS PRESENTED.

Vote: Unanimous

MR. WAKELING: The next Commission Order is for spring buffalo. We have made some minimal changes from what we have offered previously. On House Rock, we are recommending a single season of March 11 through April 10, with five any buffalo permits. That is an increase of one permit over this last year. We are also recommending three spring hunts on Raymond Wildlife Area. One season for two adult bulls is recommended. We have an amendment to the sheet that you were provided with and the dates that you were provided, the two adult bull seasons. It was originally scheduled to run May 27 through June 2. We would like to extend that to include another weekend. So June 5 is the date that we would like that season to end on. We are also recommending two separate hunts for yearling buffalo, four permits each, during January 14 through January 20, and January 21 through January 27. We received no comments from the public regarding our Buffalo hunt structures, and the Department would recommend that the Commission vote to adopt Commission Order 8, spring buffalo, as amended.

COMMISSIONER GOLIGHTLY: I am wondering if there isn't an opportunity to increase the harvest numbers on bison on the House Rock Wildlife Area. Have you looked at that in lieu of the numbers that we are estimating of the herd size now?

MR. WAKELING: We have considered increases in permit numbers. As you are well aware, it's kind of a delicate balance of trying to provide effective opportunity and trying to actually realize that level of harvest. We have a number of opportunities in place should buffalo present an opportunity to use a population management hunt to actually address population reduction and issues of that nature. This past year, there was at least one unsuccessful hunter on that spring hunt. So certainly, the opportunity to increase permits exists; but the reason that the Department recommended this level was to try and maintain the opportunity and the quality of the harvest that they have seen in years past.

COMMISSIONER GOLIGHTLY: I am not talking about the current structure. I am talking about, perhaps, a new structure for that. I know that Boone and Crockett and Fair Chase and all of those things have been entered into our buffalo management plan, but that only really applies to the bull hunting. I am wondering if the Department has thought about a new structure. I don't see the number of permits on the House Rock Wildlife Area even coming close to the reproduction numbers that we are facing each year.

MR. WAKELING: The spring hunt has historically been tailored to harvest the bull segment of the population. We shifted several years back to the any buffalo tag to provide the opportunity for hunters who were having difficulty obtaining a bull to have the option to harvest a cow, if they so choose. But that was the intent of the recommendation.

COMMISSIONER GOLIGHTLY: With this year's draw completed, do we have a pool of hunters available to hunt buffalo, at a short notice? I am not talking about depredation hunting. Is there a pool, for the House Rock Wildlife Area, of hunters if we determine we need a population management hunt?

MR. WAKELING: Yes. We do have a pool. The hunter pool has several names in place and we have not had any difficulty finding individuals that were interested in pursuing buffalo when we have used this arrangement.

COMMISSIONER GOLIGHTLY: I think we need to be a little more creative with the population in analyzing and evaluating what we are going to do with the numbers on that wildlife area. You may have a good opportunity to address some of those issues on the spring hunt.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 8, SPRING BUFFALO, AS AMENDED.

Vote: Unanimous

MR. WAKELING: I'd like to move on with Commission Order 9, spring bear. We have had a spring season since about 1985. During that time frame, a total of thirty-five male bears and eleven female bears have been harvested across all those years during that time frame. The 2004 spring bear season is the fourteenth year of operating a season that would remain open until either a specified number of female bears were reported harvested or the season closed. In 2004 we had one female bear harvested in Unit 35A, one male in 35B, and we had a third bear harvested in Unit 34A on one of the special license tags. The Department is recommending, for most units, a March 18 to April 26, 2005 general spring season. There is effectively no change to the season structure for the harvest objectives recommended. We do have a few changes for spring archery season that we are recommending. We are recommending a few longer hunts. Some of them vary in the season-ending dates. We added Units 23 and 33 to the archery spring season this year. Our goal in using these longer spring archery seasons is that they can be very effective in dealing with nuisance bears in campground situations at times. We did shorten a couple of the seasons. Those specifically are Units 34A and 35A and B. We shortened those seasons to end on July 31. Our rationale with that is: We have a new rule change in Rule R12-4-304, which specifically states the dates on which hounds may be used to pursue bears. Those dates are August 1 through December 31. So we shortened the season so it would end on those dates. We did not receive any comments from the public when we put our recommendations out for their comments. The Department does recommend that the Commission vote to adopt Commission Order 9, spring bear, as presented.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO ADOPT COMMISSION ORDER 9, SPRING BEAR, AS PRESENTED.

Vote: Unanimous

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2. Consideration of Proposed Commission Order 21–Waterfowl and Commission Order 22–Snipe for the 2004-2005 Hunting Season.

Presenter: Mike Rabe, Migratory Game Bird Supervisor, Game Branch

MR. RABE: This morning I will be presenting the Commission Order 21, Waterfowl and Order 22, Snipe. "Waterfowl" includes ducks, geese, coots and moorhens; and Order 22 is snipe. As migratory birds, waterfowl are managed in cooperation with the Fish and Wildlife Service through the Federal Flyway System, and they are managed through adaptive harvest management. There are three packages currently available with adaptive harvest management: a liberal package, which is a hundred and seven days, with a seven-bird bag; there is a moderate package of eighty-six days and a seven-bird bag; and a restrictive package of sixty days, and the bag limit is smaller yet. There is also a closed season. This year, present in the Commission Order I originally sent out, there were both liberal and moderate packages within that Commission Order, or Commission memo. But the selection actually has been made, and the package selected was liberal, by the Fish and Wildlife Service and the SRC. These frameworks are established through adaptive harvest management and they are based on the status of mid-continent mallards that are surveyed every year extensively by the Fish and Wildlife Service, and also Canadian habitat characteristics. Those are also surveyed every year. The results of this year's survey were eight point three million midcontinent mallards. You put that in the adaptive harvest management matrix along with two and a half million Canadian ponds, which were surveyed and you end up with a liberal package selection. Within the liberal package there are still some species that require additional protective measures. These are species such as pintail, canvasback and scaup, which still are somewhat below what we would like to see for their objectives. Drought continues not only here in Arizona, but in much of the United States and North America. What I wanted to point out is that there were excellent conditions this year in Alaska. Alaska is where much of Arizona's ducks originate and breed, particularly the pintail. That part bodes well for this year's waterfowl season. The hunter participation in waterfowl hunting has been fairly stable. It goes roughly between four and seven thousand waterfowl hunters every year. The harvest in Arizona last year was roughly forty thousand ducks. It peaked in 1998 and of course we realize that when there is water in Arizona we have a lot more ducks and we have more hunting opportunity. Recently we haven't had as much water as we would like to see, and the hunting opportunity has not been as good as it has been in the past. We survey for waterfowl in Arizona in the first week or two in January. We survey this in cooperation with the Fish and Wildlife Service refuge system. Last year we had a good number of ducks. We surveyed over thirty thousand ducks in the State and goose numbers were somewhat down. We are going to continue to monitor the midwinter waterfowl populations in Arizona, even though these don't really contribute to the adaptive harvest management packages. They do give us an idea of how things are going. The one thing that is new this year that is different from the last several years is the reintroduction of zones. These zones have existed in the State for many years. We have a mountain zone and a desert zone. The purpose of zoning

the State is that waterfowl typically arrive into the mountain zones earlier than they do into the southern zones. Because most of our waterfowl winter in Arizona, we want to keep the lower elevation, or the desert season open as long as possible. However, by doing that we have to open the season in the northern zone, or the mountain season, later than we would like because birds are actually available in those mountain zones earlier. So this year I did reintroduce the zone, and I think it will work very well. It was specifically called for because of the late season opener. The season closed this year on January 30, which means we couldn't open the State in the northern mountain zones until late October. By that time most of the pintails have typically moved out by then. The other purpose of this zoning is that it allows us to actually add two weeks to the framework by opening the season in the northern mountain zones two weeks earlier than the southern zones. In regards to general duck, the mountain zone we would open that season October 8 and close it January 16. The desert zone would open two weeks later, October 26, but it allows us to keep it open until January 30. Waterfowl are still in the southern zones, in the desert, by January 30. Notice there is still a pintail, canvasback season within a season. That is mandated by the pintail and canvasback numbers that were surveyed this year. That is a sixty-day season and it roughly corresponds within both of those zones. There are also restricted geese seasons in selected units. The purpose of those restricted geese seasons is to protect populations of Canada geese that are actually reproducing in those areas. So we try to open those geese seasons a little later to avoid harvesting those reproductive geese there. Bag limit recommendations are in the Federal frameworks. No more than two hen mallards, no more than one pintail or canvasback, and no more than four scaup. Possession limits in all these cases are double the bag limit.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE ORDER 21, WATERFOWL AND COMMISSION ORDER 22, SNIPE, AS PRESENTED.

COMMISSIONER GILSTRAP: It is interesting that we are going to the zones again. I am assuming that you have a process for evaluating that. Is there a way of doing a formal or informal evaluation at the end of that time to see if this is the way to go?

MR. RABE: Yes, there is. The Fish and Wildlife Service runs a survey every year, and it includes not only harvest, but also the time of harvest. So we will be able to go through that survey information and see if indeed that did work well. I do an informal survey of hunters to see whether it worked well. Because it is earlier, it actually bumps the juniors' time in the northern zone earlier, to October 2, which I think will work out very well. But this varies from year to year. And yes, I will evaluate it. If it works well, we will continue it and if it bombs, we won't continue it.

Vote: Unanimous

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3. Request to Approve a Notice of Rulemaking Docket Opening for Publication in the *Arizona Administrative Register* to Begin Rulemaking to Amend Article 1 Rules to 1) Eliminate the

Permit Fee for the Purchase of Bonus Points, and 2) Give the Commission Greater Flexibility in the Issuing of Restricted Nonpermit-Tags and Over-the-Counter Nonpermit-Tags.

Presenter: Mark E. Naugle, Rules & Risk Manager

MR. NAUGLE: In response to recent customer concerns, the Department is submitting to the Commission for their approval a notice of rulemaking docket opening that, if approved, will allow the Department to begin rulemaking to eliminate the permit fee for the purchase of bonus points and give the Commission greater flexibility in the issuing of restricted nonpermit tags and over-the-counter nonpermit tags, particularly in order to bring the elk population in the Kaibab National Forest within management objectives. The Department intends to amend the rules as follows: R12-4-104. The Department will amend the rule to remove the reference to the current permit tag fee from the subsection that prescribed the fee for a bonus point when applying for a bonus point. This is an administrative change that will make the rule consistent with other rules regarding the purchase of bonus points. R12-4-107. The Department will amend the rule to remove the hunt permit tag fee from the prescribed fee for a bonus point. An individual will thus be able to purchase a bonus point for the cost of a hunting license and a five-dollar administrative fee.

At the June, 2004 meeting the Commission directed the Department to amend the relevant Article I rule to give the Commission greater flexibility in the issuing of restricted nonpermit tags and over-the-counter nonpermit tags. The Commission originally sought a means to remove elk populations from the prime deer habitat on the North Kaibab Plateau, but requested any proposed amendment would also allow the Commission to resolve similar situations statewide. The Department has developed rulemaking to address the issue and will amend the rules as follows: R12-4-101. The Department will amend the definition of "Restricted nonpermit tag" to allow hunters to receive a restricted nonpermit tag if they meet the qualification prescribed in R12-4-115. R12-4-115 is the supplemental hunt and hunter pool. The Department will amend the rule to prescribe procedures for issuing a restricted nonpermit tag for a supplemental hunt if the supplemental hunt takes place at the same time and location as the regular hunt. The objective of the amendment is to allow hunters who are drawn for a regular hunt to obtain a restricted nonpermit tag for the coinciding supplemental hunt. Only hunters who are drawn in the regular hunt will be eligible to obtain the restricted nonpermit tag for the coinciding supplemental hunt. These tags will not be offered to the hunter pool. A restricted nonpermit tag for a supplemental hunt that takes place at the same time and location as the regular hunt will only be issued by the Department. The objective is to ensure that these restricted nonpermit tags are issued to hunters who are drawn for a hunt permit tag for the regular hunt. If an individual is drawn for a hunt tag for the regular hunt and also participates in the hunter pool, they are still eligible for the restricted nonpermit tag for the coinciding supplemental hunt. The Department will also prescribe an application procedure for hunters to obtain these restricted nonpermit tags. The application procedure also states that a hunter shall not obtain a restricted tag for the take of wildlife if it exceeds the bag limit. The Department recommends that the Commission vote to approve the notice of rulemaking docket opening for publication in the "Arizona Administrative Register" to begin rulemaking to amend rules in Article I, "Definitions and General Provisions." The amendments will, one, eliminate the permit fee for the purchase of bonus points; and two, give the Commission greater flexibility in the issuing of restricted nonpermit tags and over-the-

counter nonpermit tags, for example, in order to bring elk population in the Kaibab National Forest within management objectives.

Public Comment

MR. HEATWOLE: I am here today to speak about the buying of bonus points issue. We heard about this in the fall of 2003, and we had the opportunity to provide comments to the Department in the form of a meeting here in Arizona. At that time the consensus in the room was that we agreed that the buying of bonus points proposal was a good one, but at that time we thought that charging the full tag fee was excessive and it would also leave the avenue for people who still wanted to get a bonus point, but didn't want to get drawn. All they would have to do is apply for the most difficult hunt in the draw and have maybe a ninety-eight or ninety-nine percent chance of not drawing that tag and still getting a bonus point. Instead of paying the full tag fee, they would only pay five dollars. My opinion was that the best part of that rule would have been to keep people out of the actual draw. Well, if you charge them the full tag fee and they can get the same result by only paying five dollars, these people are going to be right back into the draw again. And I think that is exactly what we do not want to happen. So my recommendation is that we have a bonus point given for somebody who does not want to be in the draw, but pays a five-dollar application fee.

COMMISSIONER McLean: Are you objecting to the purchase of a license?

MR. HEATWOLE: I have no problems with the purchase of a license. I think it's fine if you are required to purchase the license.

COMMISSIONER McLean: The proposal would require two things: one, the payment of the five dollar administration fee; and two, the payment of the license, whether you are a resident or a nonresident.

MR. HEATWOLE: I'm very much in favor of that.

COMMISSIONER McLean: So you and the Yuma Rod and Gun Club would endorse the Department's proposal then.

MR. HEATWOLE: Yes, sir.

MR. MARTIN: I represent the Mohave Sportsmen's Club. I'm their government liaison. The Sportsmen's Club also had meetings in regards to this. Our feeling was pretty much in line with what Yuma feels insofar as the administrative should be charged, but there should not be a permit fee charge to that. What we saw this last draw was that the nonresidents, especially looked at it and said: "Well, I want to get a bonus point, but I sure don't want to pay three hundred and seventy-one dollars, so I'll just apply for Unit 10, early rifle. There's a 99.9 percent chance I'm not going to draw, and I get the bonus point." They still bought the license up front, because they applied for the bonus point. The problem was that we put a whole lot of people in the draw that didn't want to be there and competed with Arizona residents who wanted to go to Unit 10 or another early bull unit to hunt, but the draw pool got bigger. And we think that this

rule as proposed, where they could just buy the license up front, pay the five dollar fee, take some out of that draw pool, and just allow people who are really sincere in drawing a tag to be in that pool, and you are not going to further skew the odds up. So we are in absolute support of this rule.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE NOTICE OF RULEMAKING DOCKET OPENING FOR PUBLICATION IN THE "ARIZONA ADMINISTRATIVE REGISTER" TO BEGIN RULEMAKING TO AMEND RULES IN ARTICLE I, "DEFINITIONS AND GENERAL PROVISIONS."

Vote: Unanimous

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4. Request to Approve a Notice of Proposed Rulemaking for Publication in the *Arizona Administrative Register* to Amend Article 1 Rules to Address Issues Related to 1) Eliminating the Permit Fee for the Purchase of Bonus Points, and 2) Giving the Commission Greater Flexibility in the Issuing of Restricted Nonpermit-Tags and Over-the-Counter Nonpermit-Tags.

Presenter: Mark E. Naugle, Rules & Risk Manager

MR. NAUGLE: This is the notice of proposed rule-making. This package is identical to the previous package, the agenda item for the notice of docket opening. The Department recommends that the Commission vote to approve the notice of proposed rulemaking for publication in the "Arizona Administrative Register" to amend rules in Article I, "Definitions and General Provisions". The amendment will 1) Eliminate the permit fee for the purchase of a bonus point; and 2) Give the Commission greater flexibility in the issuing of restricted nonpermit tags and over-the-counter nonpermit tags, for example, in order to bring elk population in the Kaibab National Forest within management objectives.

Motion: McLean moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THE NOTICE OF PROPOSED RULEMAKING FOR PUBLICATION IN THE "ARIZONA ADMINISTRATIVE REGISTER" TO AMEND RULES IN ARTICLE I, "DEFINITIONS AND GENERAL PROVISIONS."

Vote: Unanimous

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DIRECTOR SHROUFE: We've got a choice here of two items. One is a briefing, in item No. 6, on how the Department would use new revenues if a new license fee increase was approved or pursued, or if you want to go directly into the option for maintaining resident hunting permits, item No. 5. We have some guests that are going to show up at 9:45.

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Meeting recessed for a short break

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6. Briefing on How the Department Would Use New Revenues if a New License Fee Increase was Approved and Pursued.

Presenter: Steve K. Ferrell, Deputy Director

DEPUTY DIRECTOR FERRELL: At our last regularly scheduled Commission meeting in June we approved the 2006-07 budget and that biennium constituted the sixth and seventh years of current license fees that were raised that long ago. I know the Department, as well as the Commission, had some frustration over some of the things that they would have liked to have seen financed in that biennial budget package and couldn't, for lack of revenue. So at that time the Commission directed the Department to come back to them this month and just begin dialogue about the potential for an upcoming fee increase and that is what the intent of this presentation is. It is by no means complete. It doesn't come with a recommendation attached, as yet, because at this point we are seeking additional information from the Commission in order to proceed with a more comprehensive and definitive recommendation. To give you a feel for what the possibilities might be, what we did was first look at where our current fees rest with the other western states. The Commission was provided with a copy of this presentation prior to this meeting.

If you look at where the resident general hunting license fees are in the eleven western states, Arizona is No. 4 in both the resident and nonresident category. The reason there are only six states represented there is that there are five that don't have a general hunting license since they include the cost of that into their big game permits. The three scenarios we looked at for license fee increases were a twenty percent, a thirty percent and a forty percent increase. To give you a benchmark of what the last license fee increase was, that was a thirty percent across the board. So this would be ten percent below, ten percent above, and the exact same increase that we did last time. If you were to increase the general hunting license twenty percent, that would move Arizona from being fourth in the west to third on the resident category and from fourth to second in the nonresident category. If you were to move it up thirty percent, the resident hunting license would go from fourth to first, or the highest expense in the west for both resident and nonresident. And of course, if you moved it up to forty percent, the same result. We would be the highest general hunting license in the west for both resident and nonresident.

Looking at elk next, currently Arizona is third in the west for resident elk fees. That is based on the total fees to actually hunt elk and that would include the tag fee as well as the license fee. Currently we are fourth in the west for nonresident fees. If you were to bump that up twenty percent, we would remain third in the resident category, and we would move to second in the nonresident category. If you bumped it to thirty percent, we would still be third in the resident category, but move up to second in the west for nonresident fees. If you bumped it forty percent, we would still remain third in the west. We would not change our position at all in the resident category and we would again stay at second in the west for the nonresident category.

I think what this presentation is going to start to show here is that you might want a more structured approach to how we approach the next license fee increase, rather than just going across the board, because of the disparate result of doing just an across-the-board percentage like we did last time. If you look at deer, presently we are fourth in the west for resident, tenth in the

west for nonresident. There is a good example of why you might not want to approach increases with a standard percentage point. We are a bargain for nonresident deer hunting. A twenty percent increase for resident deer, would move us from fourth to third in the resident category and only from tenth to ninth in the nonresident category. A thirty percent increase, we move again to the third position, and only up to the eighth position for nonresident, and a forty percent increase, again we would stay only at the third rank and move only up to sixth in the nonresident category. So if you were to use positioning amongst the other eleven western states as criteria for establishing fees, there is room to increase quite a bit on the nonresident side for deer.

Looking at antelope, currently we are third for resident and second for nonresident. This comes as a little bit of a surprise, compared to the other species we have looked at. I think one way you might rationalize this is that antelope is at the fringe of their range in Arizona. We don't have as many antelope and hunting opportunities as other states do; yet we have the premiere antelope hunting opportunity if you are to look at Boone and Crockett scores. If you were to move that up to twenty percent, we move from third to second in the resident category and from second to first in the nonresident category. We would remain at second and first if you bump it to thirty percent, and with a forty percent increase, we remain second and first.

Looking at sheep for a minute here, presently sheep fees for residents are the third highest in the west, and only eighth highest out of eleven states for nonresidents. This is another good example of why an even increase across the board probably should be revisited if that was what you had in mind at this time. For resident sheep, we would stay at third with a twenty percent increase, and move from eighth to sixth with a twenty percent increase in nonresident fees. With a thirty percent increase, we would be third and fifth. With a forty percent increase, we would be third and fifth. So there is probably room to move sheep, if one of your criteria was placement amongst the eleven western states, in the nonresident category.

Fishing license increases. Currently, the general fishing license for residents in Arizona is tenth out of eleven, and eighth for nonresidents. If we were to bump it twenty percent, we would move from tenth to sixth on the resident category, and from eighth to seventh on the nonresident category. If you were to bump it thirty percent, you would go from tenth to fifth on the resident side and from eighth to seventh on the nonresident side. A forty percent increase would move us from tenth to fourth on the resident side and from eighth to fourth on the nonresident side.

So what does a twenty, thirty and forty percent increase actually net? Considering that our license sales in the past fiscal year came in at about eighteen million, a twenty percent increase would net three point seven million; thirty percent would net a five and a half million increase in revenue; and a forty percent increase would net seven point four million. You might recall that the last time we bumped fees, a thirty percent increase only netted us about three point six. You asked us to give you an idea of what we would spend the money on if we were to have a license fee increase. Remember that a previous slide said that a forty percent increase would net us seven point four million dollars additional revenue. I think it is important to remember you have to keep some of that for maintenance of existing programs in the face of inflation. So that whole seven point four is really not available for new programs. You need to keep at least three million of that on the side just to keep up with inflation. So what we did in our executive staff was brainstorm what new programs we would like to see financed if you were to go above the

maintenance side. If you remember, when we did the thirty percent increase last time, we touted that as maintenance budget only, no new programs would be affordable with the past license fee increase and that has pretty much rung true. There hasn't been any program expansion with the previous license fee increase. This one, if you went to the forty percent, of course that gives you some, but it is not seven point four. I would say it is probably more like three and a half, at most. So the high-priority program expansion ideas that we put on the table comes in at seven point eight, and if you were going to only have a three point five available there, or even four million dollars for new programs, that list is not affordable right there. Some of the ideas we have on there, some of the big-ticket items, would be raises for employees. We talked about that when we did the license fee increase. These are in no particular order of priority. They are ordered by dollar amount. So the most expensive idea is at the top, the least expensive is at the bottom. We talked about classification and maintenance issues, salaries, market adjustments; we asked about how each of those strategies would be affordable. In order to do another meaningful employee raise like the sixteen percent that occurred four years ago, you would need one point nine million dollars to do that. But again, we still feel like employee salaries is an important issue. Arizona has been able to remain competitive within the profession in the job market, and every time we see slippage in that competitiveness we would lose people. By being able to put the resources in your personnel, you are able to recruit the best and retain the best, and that makes the programs so much more effective. Another big-ticket item is habitat enhancements, and being an old habitat specialist from the early 1980s, I remember when we used to do things like push juniper trees and disc sagebrush or burn chaparral and improve habitat for big game. With the Federal Land Management agency's budget, what they have become, that is not a very common thing these days. So we would propose as a high priority, putting some money into habitat enhancement, like vegetation modification. The hatcheries are something that we feel we need to start thinking about real seriously. Put-and-take fisheries in this state is certainly a money-maker. That is a good place to generate revenue and is real popular with the constituency. We notice that when the forests close due to fire restrictions, we lose revenue because the fish that we put in the White Mountain lakes and streams are no longer accessible to people. They don't buy licenses, so we know that this is a real dynamic return on investment. If you put money into put-and- take fisheries, you get license sales. Hatcheries are an expensive proposition, and we have not put a large investment into hatcheries in quite a long period of time, and if we did have the finances to do it, I think it would be a real good investment to start renovating some of our older facilities and increasing their production. The headquarters, we have talked to you for a couple years now about headquarters and there are a lot of good ideas out there. How to pay for it always seems to be the tough one. This figure of a million dollars a year is using the concept that the Arizona Department of Administration has used on some of their new construction projects downtown, on the Capitol Mall, where they actually contract with a private party to build the building and lease it back to the State. We estimate that would cost us about a million dollars a year for twenty years if we were to build a new headquarters. The rest of those items on there should look familiar to you, they are your priorities. They are things that you have said to us over and over again: access; shooting ranges; predator management; and water development. We feel the wildlife conservation fund has been a great aid and assistance in reaching those priorities. There is still lots of room for improvement there. A couple of other things that kind of jump out at you are, "More Agriculture at Robbins Butte." This is an idea of using some of our property to provide for some hunting opportunities like youth hunts and youth programs. The Department is really getting serious in trying to do some real long-term planning

and long-term investment for recruitment opportunities. And Robbins Butte is a perfect opportunity to do something like that. There used to be Youth dove hunts at Robbins Butte, and of course, they have been eliminated due to revenue concerns. "Pronghorn Management," that is a high priority for the Department. Pronghorn are encroaching on that subheading of "Imperiled," unfortunately, and there are some things we think we could do for pronghorn management if we had some additional funds to do it. The program funding we have now is insufficient to really make an effort in that regard. There are some other things up there and I don't know if there are any of them that you would like me to explain in greater detail, but a lot of that stuff should be pretty familiar to you. Reintroduction program, I think there are still lots of opportunities for us to upscale the rates and pace in which we do big game transplants, like we once did in the 1980s and 1990s. There's one up there, blue ribbon sport fish enhancement. That is using a concept that is pretty common in some western states. You might recognize it as an approach on the White Mountain Reservation, where certain reservoirs might be used for trophy fish management, as opposed to the regular family type of fishing orientation. We think there are some opportunities there that we might be able to develop without depriving or diminishing any family fishing opportunities, but it would take some investment to do that. The medium priority things, "Big Game Survey Restoration" and "Fire Restoration," the reason we put fire restoration down as medium priority was there are a lot of federal dollars going into that now, but we feel like there is a good opportunity to do more of that than what the federal dollars bring to the table, especially if you could design it for the benefit of wildlife habitat. Again, in medium priority, the "Increased Wildlife Manager's District" is left blank, because I'm not sure exactly how many we would be willing to consider. But if you were to consider one more for each region, that would be six additional wildlife manager districts, you'd have to put a half a million dollar figure in that blank there. So that total would be one and a quarter million, at the bottom. These are sportsmen's dollars. We want to focus them on high- priority consumptive-use sort of projects. All of the new moneys coming into the profession lately have been pretty much dedicated for imperiled species, nongame sorts of things. With the exception of the wildlife conservation fund, there hasn't been a whole lot of new dollars come to the profession for the purpose of sport fishing and hunting programs. So that's where we really focused our priorities here. We also tried to look at things that would generate revenue, like the hatchery programs, fish stocking and things of that nature. So those are the high, high medium and medium program expansion ideas. Regarding low priority items, these things are still of value, but they didn't quite make the cut that we applied to the other things based on the criteria I mentioned earlier. Things like trying to have some return on investment for consumptive use types of programs. But, there are things up there that would certainly be helpful to the Department, like new administration sites for some of our wildlife areas; a bigger watchable wildlife program; delisting the Gila trout; and putting some more money in the safe harbor agreements, and HCPs. There is virtually no money going into, or very little money, going into reptile/amphibian management. Things like that, we put those in the low category, probably not to be funded with any new license fee revenues any time soon.

You also asked us to tell you what sorts of programs would be lost if there was no fee increase, and there certainly would be lost programs. Some of the things that are the most difficult for us to fund every year, other than the ones that are specifically mentioned in that list, are things like our PIPP program, the pay for performance, and the incentive pay program that the Department participates in for our employees. That seems to be more and more difficult to fund. The home

office program for wildlife managers and remotely stationed biologists is getting difficult to finance. Quite frankly, if we don't get our license fee increase at some point, the big traditional programs would suffer cuts, like law enforcement. Which if you had to eliminate or leave districts vacant longer than we do now, you would lose landowner contact and you would lose that interface with our constituency in the field, which has been the thing that we have always tried to guard the most from financial problems. But certainly they could be on the table at some point. Game surveys currently are heavily financed by the state, hunting and fishing license dollars. They are not financed only by Pittman-Robertson dollars like they once were. I would guess that probably maybe over half of what we spend on game surveys is actually license fee dollars now, and not Pittman-Robertson dollars. IT technology, Commissioner McLean keeps that on our radar screen, reminding us that we do not want to get behind the curve there. And of course, the degeneration of the motor pool is something that we have been trying to wrestle with, and successfully. As I told you in June, that has been a success story, but it doesn't take long for that to get away from us. There wouldn't be salary increases, there would be degeneration of our facilities, and increased turnover. When you are not competitive in the job market, we experience turnover of our personnel. Landowner relations would likely take a hit, if we had fewer people in the field. Access would diminish as a result of that. I think we gain a lot of access through good will with landowners, and if we don't have that good will, I think we might expect access to decrease. The hatchery production would be impacted with time. About three-quarters of the way down is that word I keep using when we talk about the wildlife conservation fund, and that is "Agility." When you have budget problems, you aren't very agile in responding to emergencies. Our responsiveness would certainly be impacted without the license fee increase. I think what we are looking for from the Commission now is how you would like to see us proceed. Certainly, there is a lot of dialogue to be had yet with the public once we get a little better handle on where you would like to see us go, and now I would open it up for discussion and potential direction from the Commission.

COMMISSIONER GOLIGHTLY: This is the first real chance to look at this that we have had since we asked you to come forward with that. I think the public needs to understand that if we implemented something like this, it would take legislation. With legislation, as most of you that helped us with the last fee increase remember, it was a tough process. Without your help we couldn't do it. So we are asking, if you approve of what we are doing, to help us. But one thing you need to understand is that the last fee increase basically went to maintenance and some capital improvement. In the last increase we didn't really implement the full thirty percent in one year. It took us several years to really put that in force. These are things the Commission will talk about, on how we implement the fee increase, which would be the high and low tag. The Consumer Price Index, as you all know, is going up every year. We are suffering; the dollar doesn't buy as much as it did the year before. We don't like going to the well and asking for money all the time. It has been four years, I guess, since we had the last increase.

DEPUTY DIRECTOR FERRELL: Five years.

COMMISSIONER GOLIGHTLY: My highest priority right now is to get our employees a wage increase. The disparity between our game wardens, our accountants, our total employee base, is getting so ridiculous that we need help. I know you have listed it in terms of dollar amount and not priority, but the disparity between our wages and others are causing us to lose the turnover

race. This is sportsmen's dollars we are talking about. I think we want the best employees that you can come up with, and I think you want to retain them after we train them.

COMMISSIONER MELTON: I think we are already at a crisis. It looks like it would be real easy to pick on the nonresidents here, but I think we are already at that percentage where, if we did move the nonresidents into a more equitable position, we would also have to bring the residents up because of the cap of five times whatever the price is. We would have to raise both of them, instead of just the one.

DEPUTY DIRECTOR FERRELL: I think that five to one is kind of a general guideline. I don't think it is in any means established in any kind of an agreement, in any kind of law, or there is any constitutional nature to it. It is just kind of a general guideline, so I don't think you need to feel constrained by that five to one.

DIRECTOR SHROUFE: I don't think we need to be restricted to five to one. With these new court rulings and along with the issue that we had with the ten percent cap, there are actions in courts across the United States talking about disparate fees for nonresidents. So the five to one has been just a general rule for us, but it may be changed by the courts here in the near future. If this stuff wasn't going on right now, I would say, stick with the five to one on both of them, but it is and you may see that five in one isn't right either.

COMMISSIONER McLean: In New Mexico, they have what they call the "quality hunts" and the nonresident applications for those hunts change on a two-year basis. Not talking about the potential effect of a constitutional issue, but just from a revenue issue, have you looked at any of that?

DIRECTOR SHROUFE: Our preliminary approach is that we are essentially trying to get a starting point for discussion between the Department and the Commission. In our next presentation, we will talk about alternatives to the ten percent cap. That idea is definitely on the table. We haven't gone to the point of suggesting what those prices might be as yet, because we will need some direction from the Commission, if you view that as a worthy option for us to pursue, but we haven't analyzed what those figures would be for this presentation.

COMMISSIONER McLean: If we went from an across-the-board five to one with a percentage increase, whether it be ten or twenty or thirty percent, just from the financial standpoint again, are you looking at "stratifying" those fees, so that we take an individual look at each one of the big game species and just try and set that species tag, both resident and nonresident, based upon a survey of western states, and based upon a revenue calculation and all of those factors? I personally feel that when I look at where we are with pronghorn tags and things like that for that little, I've just got to tell you, Arizona's trophy quality pronghorn are worth a whole lot more than that little thirteen-inch buck that I'm going to shoot in Wyoming this year. It is just that simple to me.

DIRECTOR SHROUFE: We have two issues here. One is that we've got to go to the legislature and establish some caps. Then, what you are talking about and what Steve was talking about is that you study the individual, and you find out by rule how much you want to move those things

up in each category. It's a two-pronged program. You go to the legislature, and they will establish a cap for us. We come back to the Commission by rule and then look at the things that you are talking about and that Steve talked about, how you want to move those fees individually by rule. Then the Commission has the flexibility of doing that over time until you reach that legislative cap.

COMMISSIONER GILSTRAP: First, this is very good. I know that the last time around we didn't go through this kind of a process, and the public was a little caught off guard. I congratulate you and the Department for putting this together in a well thought out way early in the process. On your priorities, you are looking at those line items, and how far do you think we could project these line items into future years, if you have an increase?

DIRECTOR SHROUFE: That's a good question and that is something that you probably will want to direct the Department to do. If you were to commit, for example, four million of a seven and a half million dollar fee increase to a certain program, when does the money run out and when do you need to have another license increase to maintain the new programs that you have added to your agenda. We haven't done that yet, and that is probably one of the future steps that need to happen.

COMMISSIONER GILSTRAP: That's critical when we go to the legislature, because we want to go to them with a number that provides the "wiggle room", if you will, for the next ten or so number of years. These are fee increases that the hunters and fishermen in the state of Arizona are going to pay, so they are self-imposed taxes, and there's no way that this Commission or the Department can go to the legislature and say this is a good thing unless those who are wanting to tax themselves say it's a good thing. If in fact this or something close to it evolves, it is going to be incumbent upon the members of this audience and all your friends and neighbors and family members to support this at the legislature and say that, yes, I'm not only willing, but I'm eager, because we think that wildlife deserves an additional financial boost."

COMMISSIONER MELTON: I know we had some real problems with sheep here in Arizona, or we are going to have, with this process. Looking at New Mexico, this shows that New Mexico's resident sheep permit is only a hundred and thirty-six dollars, and for a nonresident it's three thousand and thirty-two dollars, which is twenty times as much, so they don't comply with that five percent cap. If we tried to go to something like that, I think we would be shot down right off the top of the wall, even though other states have that already. That's just an observation. There is parity already existing out there between nonresidents and residents that far exceeds what we have within this state, so that is an issue we are going to have to work with.

COMMISSIONER McLean: I am not prepared to say at this point that a disparate fee increase falls into a constitutional abyss. I think that there is a very good possibility that if we start looking at each separate species on an individual basis and establish a value of that species, both in-state and out-of-state, we might very well be able to charge. To be able to have another pronghorn permit in Arizona to me is worth a whole lot more than even a forty percent increase would reflect on this list, whether I am a resident or a nonresident. I'm a diehard old pronghorn guy and it's one of my favorite species. When I look at what we've got? We are taking new

records out of this state every single year and to be charging less than a thousand bucks for that tag, I think it's a give-away.

Public Comment

MR. ROUNDS: My name is Michael J. Rounds. You guys have increased the Kaibab habitat fee for that stamp. Did you have to go through legislation to do that?

MR. ODENKIRK: That fee is associated with the federal tax that authorizes fees for habitat enhancement on federal land. The federal law authorizes that fee, not state law. We did not need to go back to the state legislature to get that increase.

MR. ROUNDS: Is there a way, because the legislation is going to take a long time to go through, to protect everyone and is there a way to do a stamp on it to where, in regards to a deer stamp or an elk stamp, we can charge extra just to bring revenue in during the meantime for the Commission, for Game and Fish, for everyone else. A lot of the hunters are more than willing to do that, just for better odds and everything. If it's a resident stamp of fifty dollars and a nonresident stamp of three hundred dollars, or something to that effect, to where we can do a stamp until that gets passed in legislation.

CHAIRMAN CHILTON: I believe the stamp has to be the same for a resident and a nonresident.

MR. ODENKIRK: The federal government, the Forest Service, would weigh in on this issue in terms of differential fees for a stamp. My guess is that they would not support a different fee for resident and nonresident. We would need their agreement if we are going to use that as a way to generate revenue. If you are looking at a separate form of stamp, that would require state legislation to establish.

COMMISSIONER GILSTRAP: Maybe, as an example, if there was a decision to pursue a fee structure change today, this could be introduced in January of 2005 and implemented in that same calendar year.

MR. ODENKIRK: But it won't be implemented by the fall draw, or the fall hunt. Revenue is of such importance and one-way to generate the revenue in the meantime, that just may be one avenue that we can pursue. Even if it's not a five to one ratio, if it's one to one, where for an extra fifty dollars, if you got drawn, you would have to buy a deer stamp also or whatever, just to increase the revenue coming into the state.

COMMISSIONER GILSTRAP: In the next agenda item we are probably dealing with a lot of similar issues that may be implemented by the 2005 fall draw.

DEPUTY DIRECTOR FERRELL: I recognize the need to move on, but absent any kind of direction for us to take this further today, I just want to make sure you all keep it on your radar screen so you know when you want us to bring this back for further discussion and direction on another date.

COMMISSIONER GOLIGHTLY: I'd like to ask the Commission to have you start the process and draft some legislative language for Tony Guiles to bring back to the Commission at the September meeting on what a bill would look like, and the stages of implementation that come after the legislation, and establish a cap. The cap needs to be just about what your program is. We could last a long time with the high end of your cap. Then, we would establish through a rule, through public participation, on how we implement and the amount of the implementation of the fee entries for tags and licenses.

COMMISSIONER McLean: I don't want to sound like I am disagreeing with everybody up here today, but I am not willing to limit certain big game permit tag fees to a forty percent increase.

COMMISSIONER GOLIGHTLY: So when I said "forty percent," I think we have to support it in what we would do. They are going to say, "Well, Game and Fish Commission, what are you going to do with that fee increase?"

COMMISSIONER McLean: What I want to say to Steve Ferrell is to include in what you bring back to us in September a stratified big game permit structure that will include some significant increases in big game permit fees over and above these forty percent projections. I like theories based upon good sound research, but I think those are some of the things we need to look at. To some extent I think we've got to look at what is the fair market value of some of these products that we are selling.

COMMISSIONER GOLIGHTLY: Bill, what would you ask the Department to draft then in terms of legislation? I mean, you've got two issues again.

COMMISSIONER McLean: What I am saying is if we want to talk about hunting license fees, everything from a three-day fishing tag or a three-day fishing license and up, we ought to start looking at those, at what is a three-day fishing permit worth. What is it going to cost somebody that ends up in Arizona, in the White Mountains, and wants to take their kids down and drag worms through the water? I think we need to have a very affordable three-day fishing license down there. I also think that if that same person wants to come back and shoot trophy, Boone and Crockett Club, pronghorn in September or October, that it's going to cost him a whole lot more than three or four or five hundred bucks.

CHAIRMAN CHILTON: Two things. Number one, from the response in the audience, these things have to be fought for and supported at the legislature. Obviously, there must be some support, and the audience just indicated some support, for a lot of the things that Bill said. Number two, that first priority use that you had up there I agree with very strongly; that pay scale, especially for those wildlife managers. We lose them left and right and if we reduce the number of wildlife managers on the ground, we have a lesser resource for the legitimate hunters. The ability to raise that pay scale from dismal to something at least where they feel a little better about that job, is really kind of important. And it really does benefit legitimate hunters. We had six people yesterday who were out of state, who are up for revocation because they were hunting things without the right tag, and the wrong animal, and the wrong season, and I don't remember what else. If you can't touch them, then you don't collect the money from the out-of-state license

fee, and if you don't have any wildlife managers out there or a system for reporting by people who are interested in it and responsible, then they just go and multiply! If we have the support from the constituency and we can get more people on the ground to take care of that resource, we can do something.

COMMISSIONER GILSTRAP: As a matter of direction, what we need legislated, is that instead of trying to set a cap and then come back and design the fee structure under it, design the fee structure that serves the best interests of our wildlife, and then set a cap to deal with that fee structure. The other parts that I would add to it are, before developing verbiage for legislation, let's get as much public input as possible to illustrate that the constituents, who are going to bear the burden of that financial load, are on board and are comfortable. Then, remember at our last increase in fees, we actually reduced some fees, so it's not inconsistent to reduce some while increasing others significantly, or a little bit.

COMMISSIONER GILSTRAP: Have we given sufficient direction?

CHAIRMAN CHILTON: Yes. It wasn't a motion, but I am sure you got it.

DEPUTY DIRECTOR FERRELL: I know exactly what to do!

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5. Options for Maintaining Resident Hunting Opportunity in Light of the July 13, 2004, U.S. District Court Order in the Matter of *Montoya v. Manning*, CIV98-0239 PHX RCB.

Presenter: Steve K. Ferrell, Deputy Director

DEPUTY DIRECTOR FERRELL: The Department and Commission have aggressively pursued the defense of the ten percent cap for at least five years. Prior to learning the Montoya decision, a few weeks ago, the Commission was approached by Scott Bales, the attorney for Arizona Sportsmen for Wildlife with an alternative to the ten percent cap. That was this past May, in Pinetop. At that time you asked the Department if we have any alternatives to the ten percent cap, and indeed we did. We have alternatives that had been developed a couple of years prior, when we first learned of the Ninth Circuit's decision. We shared those with you in June. There were twelve of those, including the one that Mr. Bales offered in May, and you pared that list of twelve down to five. Since then, we have learned the decision of Judge Broomfield, and the ten percent cap was declared unconstitutional. The Department has been evaluating the two court opinions, both the Ninth Circuit opinion that preceded Broomfield's opinion and the most recent one. As counsel explained to you yesterday, we believe that the guidance that the courts are providing to us at this time would suggest that in order for discriminatory measures to return to the Arizona big game hunting landscape, we must first do several things. One of those things is to identify what the nonresident impact is on the state's legitimate interests, which we have defined as resident hunt opportunity. To illustrate the concept, what that might mean is that the Department go back to the big game hunts prior to the cap and define what resident hunter opportunity was. For the sake of illustration, let's say that is eighty-eight percent. It's not, but let's just say it is. Let's say then after the cap has been removed, we start to measure what

resident hunter opportunity is post cap, and let's say we realize that it's now eighty percent. So you now have quantified what your nonresident impact is, eight percent. So what the courts are telling us then is that you can now apply discriminatory measures to close that eight percent gap. It can't be discriminatory measures that close it by ten percent or twenty percent, but it has to be tailored to meet the level of impact that the nonresidents have caused. So that is a future discussion, essentially. What this discussion today is to do is to look at nondiscriminatory, even-handed measures that we believe will actually favor residents. The courts are telling us that those are legitimate, those are legal, and they are nondiscriminatory, so you can apply those in any fashion you choose until such time that you find they are inefficient or ineffective in mitigating the impact of nonresidents, and then you can go out and apply discriminatory means." So it's not to say that discriminatory measures won't return to Arizona at some point, but today's discussion is primarily to focus on those even-handed nondiscriminatory measures that are lawful today and try to get those in place by the April Commission meeting, so that we know how to set hunt orders as they may be affected by your decisions today. So I want to point out to the public that there are a couple of handouts in the back on the tables, a rather lengthy copy of the PowerPoint presentation and there is a two-pager, one page front and back, that shows you what the bonus point pool is for five species of big game as they are held by residents and nonresidents. That will be important to understand what some of our assessments of these measures are.

There are seventeen options that are viewed by the Department as being nondiscriminatory, even-handed approaches that we believe would favor residents in their practice. Attached to that then remain some options that we believe to be discriminatory, that either you have left on the table or members of the public have asked us to either add to the table or keep on the table so that you might further discuss those after you look at these nondiscriminatory ones.

The first item, Number 1, that is a nondiscriminatory, even-handed approach and would probably favor the residents is the squared bonus points. We shared this idea with you in June and we told you at that point that we didn't recommend it. You asked us to leave it on the table for further evaluation and here it is. The advantages to the squared bonus points is that it encourages license sales or the purchase of bonus points, which of course is a revenue generating concept for the Department. But if you look at that bonus point handout, the two pages, you will realize that it favors residents for sheep, buffalo and antelope more so than it does for deer and elk. In fact, deer and elk might actually find nonresidents with some sort of an advantage, at least for the first couple of years. This idea provides protection for the future; what this is getting at is that if you did flood the draw with non-residents, and let's say that influx, that large increase of nonresidents is realized for an extended period, ten or twelve years, that, especially for bighorn sheep, antelope and buffalo, anyone with the large bonus point pool right now, might be able to realize a benefit for a longer period of time into the future if their bonus points were squared. We also find that it provides a meaningful separation between bonus point holders. For example, the difference between holding eight and holding nine would now be sixty-four and eighty-one, which allows you some separation. However, we still find some significant disadvantages to this proposal. As I related a minute ago, it's not as much of an impact for residents, I should say not as much of an advantage for residents for deer and elk due to nonresident bonus point total. In fact, it might actually favor nonresidents, at least in specific hunts, and probably for a couple of years. Then maybe things would level out again later. But the main disadvantage we see with this

option is that it acts as a preference point system. As I stated in June, if we wanted a preference point system we would have put one in place, instead of a bonus point system. We did a lot of analysis of the two back when we went to bonus points and found preference points would not be advantageous. The reason is that if you are sitting there with nine bonus points right now and you square them, you've got eighty-one, and that sure feels good, but when you get drawn, you are in a preference point system, because the square root of zero is zero, or the square of one is one, and you are probably sitting it out for a couple of years before you have a meaningful number of bonus points where you are competitive again. So for that reason we still don't recommend this option.

The next option, Number 2, is additional bonus points for continuous support or loyalty. This is the loyalty bonus points that we had on the table last time, in June. This definitely, we feel, tends to favor residents, at least now because they have currently applied more consistently. The disadvantage is that it may not provide any resident advantage if it changes nonresident behavior. It might actually encourage nonresidents to apply more consistently than they do now, and then the advantage is lost. But the loyalty we feel is still something worth rewarding. We would propose that the bonus points be earned after five years of continuous application, and we would propose it be retroactive, so that we are rewarding past loyalty, as opposed to using next year as the starting point and only rewarding future loyalty. That could potentially cause us some legal problems, but I believe the exposure to risk might not be significant, and if counsel would like to pursue that further, I would ask them to if you have interest in exploring what that exposure might be. We recommend this; we like the loyalty bonus point concept.

Number 3 is to increase the bonus point pass percentage. This one was offered by several members of the public and is not one we had on the table with you in June. The advantages are that it increases the number of people with high bonus points who get drawn. What I am talking about here is that this is your ten percent pool right now. This would actually increase it to, say, twenty percent of the tags that go to people with maximum bonus points, or twenty-five percent of the tags, or thirty percent of the tags; whatever the Commission chose. We believe it would actually benefit residents at least for sheep, antelope and buffalo currently. The disadvantages of this concept are that it increases nonresident permits under the current models for deer and elk, if you were to choose a twenty, twenty-five or thirty percent bonus point pass, at least for two years. Again, you need this bonus point pool by resident and nonresident handout to see that. There are a lot of nonresidents holding bonus points right now, and more nonresidents will get permits at least for two years. The other real issue we would like to bring to your attention is the potential for unintended consequences to recruitment, if not recruitment and retention, that may result from the effects of other proposals we are sharing with you today, such as the loyalty bonus points and the conservation bonus points. I am going to get to illustrate that probably best when we get to the conservation bonus point idea. All of those potentially unintended consequences are difficult to measure right now, and until we really nail down the mechanics of those other proposals to know what those consequences might be more clearly, we are putting this in our neutral category for now and not recommending it at this time, but wanting to leave it on the table for further consideration.

Number 4 is to create premier hunts for the trophy units and charge a higher tag fee. This is the option that Commissioner McLean was alluding to on the previous agenda item. The higher tag

fees may reduce nonresident applications, but maybe not; it may not be a deterrent to many nonresidents. A lot of nonresidents don't find the price of the hunt to be as much of a deterrent as the cost of conducting the hunt. So oftentimes, even if the tag was appreciably raised, it might not be a deterrent to a significant number of nonresidents to make a difference, and it certainly is a deterrent to some residents. Some residents who are currently putting in for premium hunts are going to find these to be unaffordable if they get priced out of their range. But something else I would like you to consider is the potential for social pressure for trophy management. I think that there is some merit to the thought that if we start to put in higher tag fees and we start to basically market the trophy quality of our hunts, a greater percentage of the interest out there might shift towards trophy management; and trophy management might have some unintended consequences in our current management schemes. For instance, there are still a lot of people who would like to see us harvest animals under the same hunt structure that we do now. If the pressure or the shift goes towards a greater trophy management, you might preclude some hunt opportunities for people who don't believe in trophy management and don't intend to participate in trophy management. A good example of what I am trying to describe is that we might end up with some landowner issues where we are trying to deal with elk in a corn field or an irrigated pasture and there happen to be some bulls that are the culprits there. You might find some pressure to not allow the tool that we are currently using to address that issue, and that is the limited opportunity hunt, if all of a sudden we have increased the social awareness or preference towards trophy management. So that is just something there that we are wanting to bring to your attention and that's why we keep this one in the neutral category; we are not recommending it yet. More discussion might lead us to do so, but it's still on the table for further discussion.

No. 5 is to charge up front for Internet applications, or get rid of on-line draw applications. This was really a popular one. It came up often on the Internet survey and in the six regional meetings that we did. It may certainly reduce application rates for nonresidents and one of the things that we would like to keep on the table is electronic funds transfer (EFT). We think that this could be done with electronic funds transfer, which would allow us to maintain the Internet service that so many hunters appreciate, but still get at the desired outcome of drawing on people's resources at the time of application, as opposed to putting it on a credit card for five bucks. Essentially, an electronic funds transfer is whereby the purchaser is asked to put in the routing number of his check and his check number, and he is actually buying something on the Internet with a check instead of with a credit card. We also wanted to see if a debit card could do the same thing because, as we have discussed over and over the problems with the credit card policy when they would charge up front, and would the credit card companies consider a debit card to fall in the category of the credit card policies or a check-writing policy. Unfortunately, they look at that as a credit card. EFT would not include debit cards, but it could include checks. Under the current system, the credit card thing does violate the credit card company policies. I know that the public questions our statement in that regard because they are currently allowing exactly this in other states, allowing the purchase, or application, for big game hunts with the use of a credit card. In looking at the credit card policies and having numerous discussions with Visa and Master Card as well as some of the banks that support their practices, we are pretty clear that that is not an opportunity for us, that essentially the vendor who is offering that service in other states is doing it contrary to the credit card policies, and if there were to be complaints filed against that vendor, the credit card companies would likely come in and take his vendorship away. That's the last thing you would care to have happen to you if you were in the middle of a

draw. So that's a risk that we don't feel is worth taking. Now EFT doesn't come without cost. The cost that the credit card companies apply to a transaction has been as high as four percent; currently it is two to three percent. So when you buy something with your credit card, the seller is actually paying the credit card company a two to three percent transaction fee. There is no credit card EFT, but the bank is going to charge the Department a two to three percent transaction fee on electronic funds transfers. That amounts to about four hundred and fifty thousand dollars a year. It's not cheap. We have a slide coming up that proposes a way to deal with that, where we would be actually passing the cost on to the buyer/sportsman with a proposal to increase the application fee to cover this expense. If you look at that four hundred and fifty thousand dollars, that is just under a fall draw. By the time you add a spring draw and multiply that by two to consider the biennial budget, the biennial budget, which has already been approved by the Commission, you are looking at about a one and a quarter million dollar hit that is currently unfunded in the budget that you approved in June. So that is a pretty significant cost for us to absorb without an increase in the application fee. As you know, your direction to us has been always to seek a two million dollar balance in the Game and Fish fund and that would take out more than half of that balance. The other thing to consider is that many people support the current system. We don't hear from those folks right now, but I suspect we might, once we get rid of this system, if we do indeed get rid of it, because there are an awful lot of people out there that are silent right now in the face of this controversy that enjoy being able to put all four of their kids in for elk for the first time and perhaps won't be able to afford that now if we were to change it. It costs them twenty dollars to put four kids in for elk now and it would be the whole tag price under this system. The impact on nonresident applications may be negligible on some species such as deer and elk and the reason I say that is because of the data that we have generated on what was the impact on the Internet applications, on nonresident applications. What we have seen is that it was fairly negligible for deer and elk, and was highly significant for sheep and buffalo. So in reverse, we would suspect that deer and elk applicants would be a negligible impact on nonresident applications here, and it may indeed reduce resident applications. There will be people who won't be able to put in because they can't apply for five dollars any more. In spite of the cons, we have this in the "Recommend" category because of the high interest or support for this idea that we have received in the last two months.

Number 6 is to increase license and permit fees. We have this one on our "Highly Recommend" list, in light of the two agenda items we have already discussed this weekend. The pros are that higher tag fees may actually reduce nonresident applications. The cons are that it does require a statute change, and that would require a two-thirds positive vote in the legislature to become law; and it might generate some customer resistance. That might be a good thing or a bad thing depending on whether it's in the form of resident or nonresident customers.

Next is Number 7, to require all applicants to purchase a hunting license when applying for the big game draw. This is a really popular idea. We have higher application costs that will likely reduce the nonresident applications. The cons here are that this idea actually came up a year ago this weekend in Flagstaff, and we felt this might be a silver bullet to the problem we are trying to solve. You will recall in September of last year we came back to you and thought that there might be some issues with gambling statutes here and that threw ice water on this idea for a while. Since then we have decided it is worthy of greater legal analysis and have requested a formal Attorney General's opinion of the idea. It certainly will require legislation if the Attorney

General says it is lawful. Also, everyone who is not drawn will get a bonus point here, which might be a good thing or a bad thing, depending on your perspective, but it will definitely increase the bonus point total for nonresidents if they have to have a license in order to apply. We have this in our "Recommendation" category, pending approval by the Attorney General. It's good if it's legal.

Number 8 is the conservation bonus point. This is a highly touted option by some of our most staunch supporters, and for that reason we would really like to give this a rousing vote of recommendation. There are a few things that keep us from doing that at this point, but I think they are all manageable. For right now, this is in our "Neutral" category; but we would like very much to move it into our "Highly Recommend" category if we can resolve some of the issues. It definitely favors residents, which is the point of the exercise. It rewards volunteerism, which is extremely important. Volunteerism is one of the cornerstones of the profession on this continent, and is worthy of being rewarded and that is one of the real advantages of this concept. As such, it enhances conservation of wildlife in Arizona and that's what we are in this business for. The problems I am about to relate to you we think are manageable. The reason we have kept this in the "Neutral" category is because there are so many interpretations of this proposal out there right now, and we are not sure which one is ultimately going to be adopted by the Commission. The implementation problems that we are talking about all depend on how valuable these points become. Value is going to be determined on variables such as: Are they limited or are they unlimited in your ability to accumulate? Are they permanent, or do you lose them when drawn? How quickly can you earn them? Are they earned at a rate of one a year, or are they unlimited annually? There is a wide range of proposals out there right now. One that I have seen recently is that they should be permanent, they should be unlimited in their accumulation, even within a year's time, and you multiply the total by three. In that case, a person could actually get twenty-one conservation bonus points a year, and that would create some implementation problems for all of us. Their value is going to cause greater disputes and contested decisions. Any agency decision that is contested would come up for a resolution under the Administrative Procedures Act. You might be inundated with contested decisions on how we intend to handle people's bonus point totals. The other big implementation issue that I foresee is that if they become so valuable and hundreds of people show up on pothole projects, how do you limit the participation to a manageable number. Typically, pothole projects, at least in my experience, have always had the forty to fifty range of participants. More than that, people get in the way and they don't have enough work to keep everyone busy. If you don't have enough work to keep busy, you start having disputes over whether or not everybody contributed equally to earn their points. The other problem is how do you limit the number of participants so that you don't end up with six hundred people at a pothole project? Well, how does the Department do that? Do we do that by a lottery? Do we do that by first come, first served? The problem with doing either of those options is that you may find that of the forty to fifty people that show up, none have the skills to get the job done. You don't have a welder, you don't have a mason, you don't have a plumber in the crowd, and the project can't get completed. So those are some issues, but they are fixable with some tailored bonus point rule language that would address those issues. Another thing to consider is the unintended impact on the maximum bonus point pool. Presently, people in that pool have fifteen bonus points. If you were to have an unlimited number of permanent bonus points being accumulated under this concept, you would drive a lot of people right through that fifteen-point pool right now and as those people that are in that fifteen-point pool get drawn, at

some point down the road it is conceivable that the only people that reside in the maximum bonus point pool are conservation bonus point holders because that total point is so large. It might be fifty or sixty conservation bonus points is what it takes to get in that pool. That problem might be further aggravated in the future to increase the bonus point pool past the twenty or thirty percent. There is an issue there and again, there is a solution to that problem as well; but it depends on what configuration of this proposal you accept. It might affect the current retention issues based on the accumulation of potentially permanent bonus points. It might discriminate against residents, too; let's not forget that. One of the proposals that is on the table, and a variable we really like, is allowing for some application fee to help pay for the administration of this, and the application fee would require a statute change. Now, how do you fix some of those problems? There are lots of ways of doing that. One might be to say that there can be one conservation bonus point, and limit it at one, and that is a permanent point. You might say that they can accumulate at any rate you choose. Maybe that is one a year, maybe that is an unlimited rate, but they are lost when the hunter is drawn for that species. You might take a blend of those two and say the first one is permanent and the others are not and are lost when drawn. You might say that there is one permanent one that needs to be re-earned every year, or they may not be permanent at all. So there are things that can be done and the Department would really like to put this idea into the "Highly Recommend" category, but we think there are some of these issues that need to be fleshed out to your satisfaction before we go there. So it is still in that neutral category, waiting to be launched into the "Highly Recommended" category.

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(Recess taken until 11:05 a.m.)

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DEPUTY DIRECTOR FERRELL: Continuing with No. 9, make nonresidents pay a habitat fee when they apply for the big game draw. On the surface this looks to be discriminatory. I am going to try to explain why it would not be if we meet some legal requirements. The concept that would have to be developed here is that it's clear that residents bring something to the table other than their hunting and fishing license fee dollars. In fact, Baldwin versus Montana describes what those are; that residents, through their taxes and everything else, pay for things like highways that support access, police and fire, search and rescue and things of that nature. You would have to somehow articulate that this fee is meant to meet that additional support that residents are applying. So the pro of this is increased revenues for habitat programs, but the cons are pretty lengthy. One is the legal burden that you would need to negotiate to quantify or justify that guardianship sort of contribution that residents apply and how that would be made even, or fair, with this habitat fee. The other argument that you would have to wrestle with is the one that says that most of the game habitat in Arizona is on federal land, and as a nonresident, my taxes support the habitat on those lands. You would have to defend against that argument, and you might need to do that in court. The cost would not limit resident applications because most states that have this stamp limit it to five or ten dollars and I don't think that is going to be a significant deterrent to nonresident applications, and it requires legislation. So the Department has this on the "Do Not Recommend" list.

No. 10 is to increase the number of permanent bonus points given to people who complete an Arizona hunter education course. The pros are that it would likely favor residents, in that more

of them would find it convenient to attend an Arizona hunter education course, and it would encourage hunter education, which is definitely a pro. The cons are that you would place increased demand on the hunter education program; we experienced that when we first established the hunter education bonus points. Since we have always been able to keep up with the demand on the hunter education bonus points, this stretches the limits of the program. You might actually need to explore privatizing our hunter education program and actually have a private vendor that might consider things like Internet, self-taught, own-pace instruction, in order to keep up with that demand, which is why it's on the "Con" side. Also, it might impact resident hunters. The Department has this on its "Do Not Recommend" list. We do not like the idea.

Number 11 is a mandatory return of the survey card in order to be eligible to apply for a future hunt. It is certainly beneficial to the Department's data collection efforts. Residents currently send back cards in greater numbers than nonresidents do, so you might in practice, at least initially, have a resident advantage. But since it's really easy to return a card, and if there is an incentive applied, I think that the nonresidents would find a way to remember to return theirs at an equal pace that residents do. There is a record-keeping issue here. It would increase our costs and you would end up with increased disputes. It is difficult to enforce this one, because what you will find is that a guy tells you that he mailed it and the post office lost it, and it would just create problems. So we don't feel it is worth going here, so we have this on our "Do Not Recommend" list.

Number 12 is to restrict trophy hunts so that an individual who is drawn can only apply once every three years. We once had a rule that said if you drew a sheep or elk tag you had to sit it out for three years. We got rid of that rule because an analysis of its effectiveness indicated that it did not appreciably change your odds of being drawn. You might think you at least have a slight improvement to your draw odds once every three years, but not overall, so you are probably not better off by going this route. The data that we had back in the '70s agreed with that. The cons are, no effect on the percentage of residents versus nonresidents being drawn. That means that everybody is going to sit it out for three years, and we have some record-keeping issues here too. In the old days when that rule was in effect, you might recall it was against the law to apply in a more frequent manner than the three years, and the Department wrote citations to people who did apply inside the three-year waiting period. We don't want to return to that. That was a nightmare for us, to write tickets to folks who did that and if there is no law enforcement, what is the incentive of keeping your own records. You might just apply every single year and hope the draw remembers to kick you out. So we don't really like this, and we do not recommend it.

Number 13 is one that has come up time and again is to increase the application fees to ten or twenty dollars. It would certainly cover the costs that I spoke of earlier that the EFT option would provide. In fact, you might say that is a prerequisite to being able to go to the EFT, because otherwise you have that one point two million dollar hit on our already approved biennial budget package. The cons are that it is a statute change, and would require two-thirds of the legislative vote; it impacts residents and nonresidents equally; and it might be a negligible deterrent to nonresident applications. Because of the connection to EFT, we have this on our "Recommend" list.

Number 14; we would like to see the Commission support the concept of awarding a bonus point for a combo license purchase. This one might actually have some effect. Seventy-four percent of residents buy combo licenses, where only ten percent of nonresidents purchase combos. Thus, if that percentage was to remain at least in some form, you would favor residents with those current numbers. However, it's easy for nonresidents to change their behavior, or their strategy, and they might start buying combo licenses. Another complication with this one is that currently the computer can't tell whether you are applying for a deer tag with a combo license or a general hunting license, and license dealers sell both of those licenses out of the same book. Dealers just punch the appropriate box, so we would need to print separate license books, which would cost more money. You would have to basically have books that are only combo licenses at the dealership and books that are only general licenses. If you are printing both, the inventory increases, the dealer confusion increases, and dealer error would increase. Another thing to consider is that it might decrease lifetime license sales, because you have a lot of people that might buy a lifetime hunting license or a lifetime fishing license, but could not afford the lifetime combo license. You might actually increase some complaints from current lifetime hunting license holders because they did make the investment to have a lifetime hunting license, but now would have to buy a combo license every year to get this bonus point. The reason I have that in the "Neutral" category is that it is still worthy of consideration primarily because of that huge disparity of residents and nonresidents that apply for combo licenses now.

No. 15 is to make a rule that nonresidents should not exceed residents in number of tags drawn; no more than fifty percent, overall, by species, for buffalo and sheep, and no more than fifty percent by hunt number on the previously capped hunts. The pros here are that it provides an upper limit on nonresident participation; and apparently, the minimum tool; I can't imagine what else the Ninth Circuit could describe as a "minimum tool" other than one more resident gets a tag than the total number of nonresidents, so it would likely be uncontested. The big disadvantage is that it provides an insufficient resident advantage. We don't think it is really worth pursuing, but we have kept it in the "Neutral" category for further consideration.

No. 16 is to make lifetime hunting license come with one bonus point. You would need to seek legislation to establish a nonresident lifetime license. Currently, only residents can buy lifetime licenses, so in order to make this a nondiscriminatory approach you would have to allow some nonresident lifetime licenses. Currently, it would be more of an advantage for residents due to cost. We kept this in the "Neutral" category, worthy of further consideration, but have not recommended it as yet.

No. 17; this one came up from another state, actually. If drawn for a lottery hunt in any other state, you would lose your home state bonus points. The pros of that are that it would zero out a hunter's bonus points in Arizona, even when they were drawn in another state. Let's say a guy drew a Wyoming elk tag, he loses his elk bonus points in Arizona. It might make nonresidents more selective in what they apply for; however, the problem with that is that they may be more selective in favor of Arizona hunts, and it might actually hurt Arizona more since it seems, and maybe we are a little biased, but it seems we provide the best product. You might actually make more people choose Arizona as their one choice, applying to Arizona exclusively. It might actually increase interest here and alienate other states. Other states wouldn't be very happy with us if they stopped getting nonresident applications because nonresidents are saving their

applications for Arizona. That could apply to residents as well. We have left this one in the "Neutral" category just in case somebody wanted to contest the analysis, but we really don't think this is a usable solution, and we would like to put in the "Do Not Recommend" category, but we left it here for further discussion.

To get into the discriminatory ones, eliminate the sale of parts and maintain the ten percent cap. We discussed that with you in June. You would still have a concern over the Ninth Circuit case, that interstate transportation of hunters and commerce. This doesn't really solve the entire decision by the court, extra bonus points or bonus point preference for residents only, and even possibly doubling them. Again, this is highly discriminatory, and probably wouldn't pass the current guidelines that the court established for us.

Another is to limit Internet applications to residents only, with non residents applying manually. While this might have sounded good in June, we have changed our mind. It is highly discriminatory. You would have gotten another lawsuit that you would lose.

Another is a proposal from the Arizona Sportsmen for Wildlife to create a commercial and noncommercial tag: Scott Bales is here, and I would like him, as soon as I am done here, to come up and talk to you about that. I believe Scott is prepared to talk to you about the Department's concern over that nexus to the commerce clause that still is in effect under his proposal, being the interstate transportation of hunters.

Another is a nonresident set-aside draw for nonresidents only, with the nonresident levels not to exceed the highest number of nonresident tags issued prior to the ten percent cap. This is the one that we have been asked to keep on the table by the public. It is very similar to No. 6, which has also been asked to be kept on the table by the public.

Another is an idea that has been offered to have hunts established only for bonus point holders. Initially, our read on that was that it was discriminatory, and that's why we didn't have it in our package. Mr. Odenkirk looked at this a little closer and is starting to formulate a different opinion and will have some comments on that, if you wish, so it might be discriminatory, but we are not sure yet. There are two ways you could implement this; you could actually set hunt numbers aside for each species that only conservation bonus point holders are eligible to apply for; or you could make this another bonus point pass, just like the maximum bonus point pool pass, where you run everybody through the maximum bonus point pool first, then run them through the conservation bonus point pool next, and then everybody who is left not drawn is being applied in the regular draw.

In summary, the nondiscriminatory ten percent cap alternatives are the seventeen we just went through. The reason we need to make some decisions today is the proposed rule language would have to be brought to the Commission in September to implement for the 2005 draw. That's why we need some decisions today. There is a public meeting on proposed rules scheduled for whatever rules you direct us to open. That's the end of my presentation and I can come back up and answer questions as you go through these issues.

Public Comment

MR. BALES: My views are formed in part by my experience, both working on constitutional issues in state government and in private practice. I currently work at a law firm in Phoenix, where I have been since 2001. Prior to that, I served as the Arizona Solicitor General from 1999 to 2001, where I represented various state agencies and state officials in constitutional litigation. So my experience as a lawyer has involved a substantial amount of work on constitutional issues that implicate state government. Before I joined the Attorney General's Office in 1999, I had worked for five years in the U.S. Attorney's Office and the Department of Justice both in Arizona and in Washington, D.C. I moved to Arizona in 1985, and have been a resident of this state for nineteen years, so my background is pertinent to my comments today. Let me make three points at the outset that I think are probably obvious, but are important ones to keep in mind. An important decision that you need to consider is whether the Commission is going to continue to try to support some cap on nonresident hunting permits. It is certainly the position of the organization that I represent, Sportsmen for Wildlife, that a cap on nonresident permits is an important element of maintaining support for our game management program in Arizona and for supporting and ensuring opportunities for Arizona residents to engage in recreational hunting. The fact that there has been an adverse ruling now by the District Court after the Ninth Circuit ruling doesn't in itself mean you should throw in the towel, and you should continue efforts to sustain a limit on nonresident permits until there is a definitive legal decision, if need be, by the United States Supreme Court, that says that that option is no longer viable. The reason the Sportsmen take that position is that they believe, and they believe this is well supported, that the only way you can truly preserve recreational opportunities and support for our program is to continue to have some cap on nonresident permits. The second point is related. Nearly twenty states across the United States limit in some way, either by percentage limits or absolute number limits, nonresident access to hunting permits. They are not unique in doing that; it is something that is quite common. Again, it reflects the belief that that is necessary to secure support in hunting opportunities. It is also fair and accurate to say that there are across the country a number of court challenges still pending. As you are aware, there is a case pending in the Tenth Circuit; there is litigation in the upper midwest; I believe I heard that there has recently been litigation filed in Nevada. This is an area where the legal boundaries are somewhat in flux and unclear, and I would be the first to tell you that no one can guarantee to you that the alternative that we have supported ultimately will pass muster. But again, I think the important question to focus on initially is, is it a fight that is worth continuing to fight or are you at the point where you should effectively throw in the towel.

Now, let me turn to talking about why our proposal we submit is more defensible than the rule that was struck down by the District Court. We have suggested that the Commission, by legislation if necessary, either distinguish between permits for hunts for commercial purpose and recreational purposes or that you support a ban on the sale of any parts taken for the hunts of at least antlered deer, elk and bighorn sheep. The reason we have advanced that proposal is that we think a linchpin to the court decisions is the fact that Arizona allows the commercial sale of antlers and hide. That was part of the Ninth Circuit's reasoning in concluding that our permit cap substantially affects commerce; it was the reason that, when the case went to the Supreme Court, the people opposing the Court taking review argued that our statute was distinguishable from those considered in other cases. So in a way, this proposal says, all right, we will take you at your word. If we are subject to extra scrutiny because we allow the commercial sale of parts, we

will stop doing that because it's worth more to us to reserve to our hunters the opportunity to engage in recreational hunting than it is to ensure that hides or antlers can be resold. Now, I know that you have been told that a concern with this proposal is that it may not answer the constitutional question, and at a certain level, that's true. You don't know for sure what a court a year from now or two years from now is going to say on that point. But we would submit that you do know, from the Supreme Court decisions and the Ninth Circuit decision, that this is at least a defensible argument; that if we are no longer restricting nonresidents in their abilities to get items that can then be sold, the resulting regulations do not substantially affect commerce. If they do not substantially affect commerce, you are back to the less rigorous scrutiny that Judge Bloomfield applied when he initially upheld our rule years ago, at the early stages of our litigation. There has been some discussion about the Supreme Court's decision in a case that people often call the Main camps case, or the Campground case. This was a 1997, five-to-four, decision read by Justice Stevens, and the Court there held that it was unconstitutional for Maine to tax more highly, campgrounds that primarily served out-of-state residents. The nature of the law issue in that case is important, because what the Supreme Court said was you cannot, as a state, assess a discriminatory tax on this commercial activity of providing campground services. And, indeed the Court explicitly said that these campgrounds were analogous to motels, so it was as if the state were assessing a tax that said if you are allowing a nonresident to stay in your motel, the tax is going to be higher. That isn't what we are talking about with a proposal that says we are not going to allow the commercial sale of antlers and parts, and we are going to limit the number of nonresidents that can have access to that activity, because you are no longer talking about a commercial activity. Another aspect of the camps decision, which people have sometimes commented on, is that the Court did observe that the consequence of the main tax was to restrict out-of-state access to Maine's natural resources, and that's true. The Court did make that comment. They said that the consequence of this discriminatory tax is to perhaps limit the number of nonresidents that would come to enjoy Maine's lakes. The important point there is that the court was talking about a discriminatory cap on a commercial activity that interfered with access to Maine's natural resources. It would be analogous to Arizona enacting a law that said to guides that we are going to charge you twice the tax rate for serving nonresidents than for serving residents because that is a commercial activity. The other things about the camps decision is that when the court was talking about natural resources, it cited cases involving things like hydropower or items that could be sold in commerce. Again, if Arizona were to say, for example, if you want to mine silver in Arizona, ninety percent of the silver that can be mined is restricted to residents, you can see how that would have an impact on commerce and would be questionable under the commerce clause. But if you are talking about a state supported resource, as we are when we are talking about wildlife, and you imagine a situation where it cannot be sold in commerce at all, the question then becomes, does the indirect effect that restricting assets would have amount to a substantial burden on the commerce. And this is where we come back to the Ninth Circuit decision. It's true, if you said that residents get ninety percent of the permits, there might be some effect in terms of limiting the number of people who come across the state line to hunt, but that doesn't, in itself, mean that that substantially burdens commerce. This might get a little technical and sound complicated, so I hope you will chime in if I am not as clear as I ought to be. In the camps decision itself, the Supreme Court said, if we are assessing whether a state regulation substantially affects commerce, it is almost the flip side of asking whether a local activity is subject to congressional regulation because it substantially affects commerce. But the commerce clause, after all, has both a negative side and a positive side. It is

an affirmative grant of power to congress to reach out and regulate activity; it is also a negative in the sense that it restricts states from unduly burdening interstate commerce. So in the camps case the court said, in the past we have said commerce can regulate things like motels, because that does affect the flow of commerce across state lines, so you could imagine the consequence in camps being, if a state discriminatorily taxes something that effectively is a motel, that substantially burdens commerce. Well, since the camps decision, in cases that look at the scope of congress's power to regulate, the Supreme Court, closely divided, has said that merely because a local noncommercial activity may, in a cumulative sense, affect the flow of commerce across state lines, that is not sufficient to make it substantially affect commerce for purposes of congressional regulation. If you take the logic of camps, and you say we are going to look at whether something substantially affects commerce by applying the same test in analyzing the scope of congress' power as we apply it in looking at whether a state can permissively regulate, the implication is that a noncommercial activity, while it may in some cumulative sense have an incidental effect on the flow of things back and forth across state lines, does not itself substantially affect commerce. That would be the basis for our argument, that if you de-commodify or de-commercialize the use of the antlers and hides, you have then made that activity, the recreational hunting of those game items, noncommercial, and the fact that the state limits the number of permits to nonresidents for that activity doesn't substantially impact commerce. That puts us in a new ball game in terms of defending the law under the commerce clause. Now, let me just conclude by making one other, I hope, fairly obvious point. The Department has today identified a number of alternatives to you. None of them have the effect of substituting for the loss of the cap on non- resident permits. There may have been official effects, but they are all incremental efforts to partly make up for what has been lost. Second, the ones that the Commission most advocates, in particular, the fee increases, are going to inevitably require legislative action. So what I suggest to you is that if you are going to be endorsing trying to make some incremental tweaks, or fixes, by means of legislation, you ought to include as part of your package something that keeps you in the game for the bigger fight; that is, something that is going to keep Arizona, along with the large number of other states around the country that does limit the number of permits that can go to nonresidents, able to ensure that its own residents have recreational opportunities. That concludes what I had prepared as far as my statement.

COMMISSIONER McLEAN: If by statutorily removing or de-commercializing the sale of antler parts. you de-commercialize hunting and make it a purely recreational activity, why then do we even need to go to that next step of having a separate draw in a commercial hunt? Why don't we just de-commercialize hunting by repealing the statute that allows us to sell nonedible parts and go back to a ten percent cap?

MR. BALES: You could do that and indeed, as an alternative to distinguishing between giving permits for commercial hunts versus recreational hunts, which is a proposal that Sportsmen for Wildlife has advanced, if what you are suggesting is why not just eliminate the sale of parts for all hunts and perhaps go back to a ten percent cap, that's an alternative. In some ways, it would constitutionally be a more defensible alternative and I suspect the Department would say that in some ways it is an easier alternative to administer.

COMMISSIONER McLEAN: I certainly think it's an easier alternative to administer, and it is certainly more straightforward and understandable by everybody; but do we, however, in your

view walk into the courtroom tainted by the Montoya decision and with Judge Broomfield or somebody else who looks at us and asks what we're doing back here in the courtroom after being thrown out last year.

MR. BALES: The argument would be that the Ninth Circuit explicitly distinguished our statute from those that had been considered in other cases and upheld on the grounds that Arizona permits the sale of antlers and hides. We have now taken that out of the statute and we think that puts us back where the law only incidentally burdens commerce. But I can't guarantee Judge Broomfield would agree with that argument. I think, given the Supreme Court precedent, that is a more persuasive argument. The other wild card in this is the Commerce clause jurisprudence is in flux. Within the last ten years, the Supreme Court has dramatically changed the ground rules. The Maine camps decision was a five-four decision, with Justice Stevens, one of the oldest justices in the majority. The Morrison case that I mentioned was a five-four decision, with other justices in the majority, and no one can tell you what the Supreme Court two years from now is going to do in terms of interpreting the Commerce Clause.

COMMISSIONER McLEAN: Would you be comfortable, hypothetically speaking, if you were to have to argue this issue either in front of Judge Broomfield or in front of the Ninth Circuit, if we simply ask the legislature to de-commercialize the sale of hides and horns, and then lock down virtually the same ten percent cap rule?

MR. BALES: I meant to say this earlier that I think that was the right legal conclusion, that if you did decommercialize it, it would be constitutional. It's important that if you go forward legislatively, that a record is made that the purpose of this is to preserve recreational opportunities that otherwise would be threatened and also to preserve support for the game management program in Arizona. Both of which points are factually accurate. But as you know, it is important in developing legislation that may be challenged to make sure that the appropriate record is made in terms of why the legislature is doing what it's doing.

COMMISSIONER McLEAN: Let me ask you a couple of questions that are very closely related, but really different. We all have been talking about a ten percent cap. Ten percent has been almost an arbitrary number. Somewhere back in about 1991 this Commission picked a ten percent nonresident cap because I think that sounded like and was a convenient number. To date nobody has demonstrated to me, and in fact Deputy Director Ferrell has said that we really don't know what the impact on resident opportunity is. If we were to ask the legislature to de-commercialize the sale of hides and horns and go to a cap, do you have any suggestion or recommendation or argument as to how we arrive at the appropriate percentage? Do we just again reach out and say that ten percent is a nice round figure, or do we do some type of a study to figure out what that percentage is? And, if so, what does that study look like?

MR. BALES: It's desirable to have a record that shows that the purpose is to preserve recreational opportunities for residents, and to do that does involve assessing what the impact of nonresident permits has been. If you de-commercialize, the scrutiny is a reduced level of scrutiny, because you are still going to have a balance and test analysis at the end of the day. It is one that is easier for the state to use, but it is still a test and the Department has already contemplated this, trying to look historically at both before and since the adoption of the ten

percent cap to see what the volume of nonresident permit applications has been, to see what the volume of resident permit applications has been, and the impact on each other. There is a point that you probably all here are sensitive to. In Arizona, as a consequence of the growing population and the number of applications relative to the number of available hunts, the opportunity for a resident hunter to get picked goes up and down, independent of nonresidents. So what you are trying to preserve is the chance of an Arizonan having the opportunity to hunt one of our premier big game species. We need to recognize that fact as well.

COMMISSIONER McLEAN: Does that percentage, whatever the percentage is, have to be the same for every species or for every hunt? In our prior rule, we isolated deer hunts north of the Colorado River, or Kaibab hunts, we isolated certain early season bull elk hunts, the high probability of trophy bull hunts, and then we also isolated all sheep hunts and all bison hunts, or at least all bull bison hunts. Does that percentage have to be the same across the board or can we say for example, on antelope and sheep, that there are no nonresidents, but on elk and deer hunts north of the Colorado River, we would apply some percentage?

MR. BALES: There is nothing constitutionally that requires the percentages to be the same. It may make any alternate law more defensible if the percentages vary based on consideration of what is needed to preserve the recreational opportunities specific to that game species. You are obviously more likely to invite challenge and somewhat less likely to sustain a rule that absolutely prohibits nonresidents from a chance.

COMMISSIONER McLEAN: Would you discourage us from advocating a rule that absolutely prohibits nonresident chance, just for those reasons?

MR. BALES: I would, but I am not sure I am speaking for my clients. If you look nationally, and I say this because courts are not indifferent to what practices are across the country, of the twenty or so states that run it by percentage or number of nonresident hunting permits, there are very few that have absolute prohibitions. In fact, I think there may only be one. Frankly, if you do that, you also make it somewhat more difficult to get a legislative change made because there are people in Arizona who provide services to nonresident hunters, so they wouldn't want to see that shut off completely.

COMMISSIONER GOLIGHTLY: If the Commission chose to discontinue commercialization of wildlife, or the sale of parts, could the Commission go for legislation that would allow us to sell it, but not the public? Is that discriminatory? As a program within our own agency, the Game and Fish Department confiscates illegal parts and then we market those products and dedicate the money to the law enforcement effort. It's all legal now within the current legislative process, or the administrative acts. Could we discriminate within our own body and not be discriminating against interstate commerce?

MR. BALES: It's obviously cleaner if you don't try to reserve for yourself that right. There is an argument that the limited type of sale that you contemplate would still only have an incidental effect on commerce. You are not saying that nonresidents are somehow discriminated against in their ability to sell or buy the parts; merely that, like every other hunters in Arizona, they cannot, with the game they take under a permit, turn around and sell it. But there is some incidental

effect and I think something that you would need to assess and something that certainly the legislature would have to assess is whether the advantage of those types of programs could perhaps be otherwise attained or whether it is such that you would want to run the additional risk that it would present in terms of defending a permit cap. One thing you could do, if you were to secure legislation and de-commercialize hides and antlers, you could put an exception into it for the Department's own sale of salvaged parts or donated parts, and you could also put in what they call a severability clause in the legislation that would say if the law were challenged and deemed unconstitutional because of that provision, it would fall out, and the rest would still remain in place.

COMMISSIONER GILSTRAP: I would agree with Commissioner McLean that the Maine case was very insightful and I now have a much better understanding of how they differentiated and are not so similar. In fact, to a degree, let me see if you can reinforce that. Would it be fair that you could make an argument that the commerce that is utilized within the state from our resident hunters to and from their hunt site such as hotel, motel, meals, all related expenses, are either synonymous, if not maybe more than, a nonresident?

MR. BALES: That may be right; I think that's more of an argument. If someone said that if we de-commercialize the parts, that may hurt Arizona businesses, I think that is what that point probably goes to; that the businesses that benefit from that activity are going to benefit just as much from a resident hunter as they would from a nonresident hunter. That point, though, doesn't really affect the Commerce Clause analysis, because the question is still going to be the flow across the state line. Your point is an important one, but it is really not a Commerce Clause reason.

COMMISSIONER GILSTRAP: But it might be a factor that relates to the legislature as being positive in their perception of what we are trying to accomplish.

MR. BALES: I agree.

COMMISSIONER MELTON: I have a hard time understanding when we just say something is commercialized, and we know that people are coming from all over the country to harvest these animals and they are using commercial guides to take them on that particular process. What makes that word, de-commercialized, have any difference on the Commerce Clause? There are guys from all over the country that want to hunt these animals, and just because we say they are de-commercialized, what actually make them de-commercialized?

MR. BALES: Your comment is one that actually many critics of the Ninth Circuit case have made about its reasoning. Why is it that so much about the validity of this law would depend on merely the fact that people are allowed to sell the antlers and hides? That's what the Ninth Circuit said. There were basically two legs to its conclusion; one was that Arizona, unlike some other states, allows the sale of antlers and hides taken by hunting permit; and the other was that you have a flow of people coming to engage in that activity. In terms of the constitutional analysis, maybe the best way to think of it is in terms like this: Suppose Arizona legalized the sale of petrified wood, but we then said that only residents can come and gather petrified wood. This is sort of how the Ninth Circuit looks at our law in terms of our hunting permits. You can

see how that prevents nonresidents from getting access to a product that is sold commercially. And for that reason, you can see how they would come to the conclusion that it discriminatorily burdens interstate commerce.

COMMISSIONER GOLIGHTLY: If the example you used on petrified wood were in a State Park, instead of a federal monument or National Park, would that still hold true? Arizona State taxpayers, and all over the United States, citizens pay taxes, and the parks are supported by nonresidents and residents. If that petrified wood were in a state park and we had that only residents could pick that stuff up and sell it, does that still affect the commerce law?

MR. BALES: I don't think it would make it defensible under the Commerce Clause, and that question, if you translate it over into game management, I don't think it would help us in defending the restriction on nonresident hunting permits. If where you are headed is, could we be more restrictive on state land than we are on federal land, I have not seen an argument that makes me think that's true. If you are allowing people to sell the products of the hunt, I think that type of discrimination, even if it just applied to state land, would be closely scrutinized and would likely be struck down. Also, I would wonder if you could accomplish the objectives if you limited it to state land, given the amount of federal land, particularly the national forests, in Arizona. I don't think it would help.

COMMISSIONER GOLIGHTLY: I know that the wildlife belongs to the state; it doesn't belong to the federal government. So if the wildlife is occupying state land and leaves the parks on state land, do state residents have a hundred percent ownership of those parks?

MR. BALES: That's true, but there is a decision where the Supreme Court has basically said that the notion that the state owns the wildlife doesn't give you sort of a free hand in terms of Commerce Clause regulation. I think it's a case called Hughes. I understand your argument, and it is something that I think is true. We as Arizonans pay to make sure that the game is properly managed; and in an ultimate sense, because of the state's regulatory power, I guess we are the owners. But the Supreme Court has said that that doesn't mean you can restrict it to your own citizens without any Commerce Clause scrutiny.

COMMISSIONER McLEAN: There are three types of animal parts that are out there that are currently subject to sale. There are those parts that result from a legally hunted animal, and then there are the naturally cast or shed antlers of a deer species, and then there are what I call pick-ups, all types of animal skulls and a lot of other parts. Do you see any problem in distinguishing, if we go to the legislature and ask them to de-commercialize the sale of legally hunted animal parts, but leave salable the nonhunted animal parts.

MR. BALES: It is marginally harder to defend, but you have an argument. You could attempt to except that out, but if that were the approach that you took, it would be desirable to include a severability provision so that if that were deemed to be somehow impermissibly discriminatory because it's indirectly limiting the input or nonresident access to those types of nonhunt sales, the fallback would be a broader prohibition.

CHAIRMAN CHILTON: I do have a couple of questions. First, we recognize as constitutional facts, fears of restriction and interference with interstate commerce. Our problem, however, is that Commerce Clause has been interpreted and expanded extensively throughout last few decades, and while you cited a couple of cases were in split decisions, the court was more careful about its application of that clause. There are a lot of other circuit cases, especially since we live in the Ninth Circuit, where things have tended in the other direction, where they are going in the direction of a broader and broader interpretation of commerce. I am thinking of that case, and I wonder if you are familiar with that case, in Texas, the one where there was an interstate commerce decision, and I am not sure where that is in the appellate process.

MR. BALES: I am not familiar with that decision; but as a Texas decision, that court is in the Fifth Circuit, so it would have some persuasive influence with the court here, but it wouldn't be binding in the way the Manning decision is.

CHAIRMAN CHILTON: I am aware that that's a different circuit. Unfortunately, there are cases that have been appealed in those circuits that have not yet gone to the Supreme Court where the Commerce Clause has over the course of the last few decades been expanded to include just about everything.

MR. BALES: I would differ with you a little bit on that observation because beginning in about 1995, with a case called Lopez, which said the Congress had exceeded its power by trying to prohibit the mere possession of a gun in proximity to a school. The Court has again, often very closely divided, narrowed its view of what affects commerce in terms of the ability of Congress to reach out and regulate. Now, it's still a little unclear if the Court is going to continue the approach that it applied in Camps and say that in determining if something substantially affects commerce from the point of view of the ability of Congress to regulate, we are going to apply the same test that we apply in determining if a state regulation substantially affects commerce. To this point they have applied the same test, so to say that the Court has narrowed the power of Congress to regulate, the implication is that it enlarges the power of states to regulate without substantially burdening commerce.

CHAIRMAN CHILTON: We are looking at the difference between the dormant Commerce Clause and the active. Now, we are really not looking at the power of Congress to regulate in Arizona. We are looking at what these courts are saying is prohibited to the states, rather than what is permitted to the federal government.

MR. BALES: Correct.

CHAIRMAN CHILTON: I personally believe that this Commerce Clause has been inflated out of all resemblance to anything that was intended in the Constitution; but we are dealing with the fact that various circuits have come down and influenced the movement of that interpretation. One of those is the Ninth Circuit. Now, what would you recommend that we can actually do? Our own counsel essentially is telling us that it's probably going to be knocked down by the Ninth Circuit.

MR. BALES: Let me make a couple of points. I think it's important to recognize that partly what is at issue is whether you are going to give up the effort to sustain a limit on the number of nonresident permits. I think that's an important effort to continue because of its impact on both recreational hunting opportunities and the game management policies in our state. It is not something that is going to be decided in the short term. The proposal that Sportsmen for Wildlife has advanced is something that, given the current concepts, would need further legislation, so that if it were part of a package that you are going to take to the legislature in the next session, it would probably not become effective until sometime well into next year. That quite likely would be subject to a further challenge. In the meantime you have courts across the country that are also entertaining challenges. So in a sense, there isn't an easy or an immediate solution, but I think, in terms of the long term interests of Arizona's hunters and Arizona's wildlife, there is still an important right to be sustained for the limits on the nonresident permits. Other states are also under challenge. I don't think Arizona should sit on the sideline; I think you should go and try to get a change that would let you go back to court and say that you said our position, unlike some, has been upheld in other states as vulnerable, because it involves the commercial sale of antlers and hides, and we have tried to fix that problem. If the court tells you that you didn't succeed, you can appeal and you can try to get the Supreme Court to review it. But that's the only way you are going to have a chance of upholding limits on nonresident permits. The other alternatives that the Department has made good efforts to try to identify and propose, none of those accomplishes what the permit limits accomplish. Their efforts to make some incremental tweaks may have some beneficial effects, but it doesn't change the fact that we have lost the permit cap under the current legislative and regulatory framework.

CHAIRMAN CHILTON: There are recommendations for prompt action that would pretty likely be deemed discriminatory. Also, there are recommendations for the gathering and compiling and analyzing the data that would support action that would be deemed to be an appropriate remedy for the right of the opportunity of Arizonans to hunt that is being denied by out-of-state applicants. In other words, we have to build a base first, but the Department is now saying to take these actions that may actually have some immediate impact to the positive right now, and then start building the information base that permits you to defend in court more assertive action at a later date.

MR. BALES: I think those efforts do have merit. I would observe that there is only thing that they suggested to you that they can do promptly, and that is in regards to the Internet fees. Every other measure they have identified, even those that don't require legislation, are going to require rulemaking, which, by their own timetable, could not be implemented before next spring. So my point is that if you are going to look at a panoply of changes that may have some criminal effects, and if you are also going to be looking at legislation, you should include as part of that legislative effort preserving the one thing that really is going to have the most beneficial effect in terms of protecting residential opportunities and preserving the game population.

COMMISSIONER GILSTRAP: As a constitutional attorney, if you were in a position to defend, in whatever court, the recommendations you have outlined for us today, your comfort level, irrelevant of your client, what would be your comfort level in being successful in defending? Would that be a case that you would be eager to take because you had the anticipation of

winning the case? I am not saying you as an individual; but you, from your perspective, as that being a defensible case that a bright, articulate, competent lawyer could win.

MR. BALES: Given the current state of the law, I think that's a defensible case. I think the chances of it succeeding are sufficient that it would merit putting yourself in a position that you can make that case. The uncertainty is that you don't know, for example, what the Tenth Circuit is going to do and if the Supreme Court is going to take that case and, if the Supreme Court did take that case, if two years from now there has been a change in the composition of the Supreme Court that affects this Commerce Clause. That's why no one can stand up here and tell you definitively whether the kind of proposal we have advanced is going to solve the problem or not. But again, it keeps you in the game; it helps defend something that at least my clients think is very important to preserving, both the opportunities to hunt and maintain the quality of the game in Arizona. I don't see an alternative on the table that does that.

COMMISSIONER GOLIGHTLY: Could we be held liable, personally liable, if your plan were to be determined to be discriminatory after the decision is already on the market?

MR. BALES: I think I probably should defer to Mr. Odenkirk to give you advice, and that would likely be in Executive Session. As you know, public officers get sued all the time under Section 1983 for alleged violations of people's constitutional or federal statutory rights. You have a qualified immunity in some circumstances, and you have an absolute immunity for certain things that are done in your legislative capacity. It would not be my place to try to stand up here and advise you in terms of the scope of that immunity, particularly as it might relate to your supporting legislation that the legislature itself adopted. But I have sort of flagged for you the questions. There would be issues about whether absolute or qualified immunity applied and I really should defer to your counsel on that. Another factor that Mr. Odenkirk could certainly explain to you is the extent to which the state, through its risk management program, indemnifies individuals who are sued for acts taken in their official capacity.

CHAIRMAN CHILTON: This is a very serious and complicated issue. We have received some advice from counsel, and we do see some problems out here. We are living in that Ninth Circuit and we are subject to their interpretation. Their response to us might be to say that in case you didn't get what we were saying, we are going to apply a little financial incentive to make sure you understand it this time.

COMMISSIONER GILSTRAP: So the difference from the advice we have had before on similar issues is that this is an attempt to work within the sideboards that the Ninth Circuit and the District Court gave us. So we are trying to work with the court, rather than ignore the court.

CHAIRMAN CHILTON: Yes.

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(Recess was taken until 12:47 p.m.)

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8. Call to the Public

MR. SHELDON: We have a situation to do with commerce, we also have a situation with horn and hide. I don't think I would want to be a taxidermist in this state, if you catch my meaning. I am not going to plead the economic ramifications of what this has done and the decision that the Ninth Circuit Court has put upon us, the economics of the whole State of Arizona, via the trickle-down affect of this. I've done some research on that, and I think it's going to be horrific to everybody in the State of Arizona. We have all these issues going on about what is constitutional, what is discriminatory, what is reasonable. Let's call it what it is; we lost. So let's call everything even. Nonresidents stay the same as residents. Tags are what they are as they stand. But let's talk about commerce. We know what the State Constitution is for the residents of Arizona. Game animals are for us, for residents. They are ours; we own them. So when a nonresident comes to the State of Arizona and he decides to take this animal, why don't we assess him for the dollar value of that animal? If we deem that a poacher is caught killing an elk and we assess him a civil liability of seven hundred and fifty dollars, or the Governor's tag is auctioned for a hundred-plus thousand dollars, or Mr. Montoya comes over here and charges you thirty-five hundred dollars to partake in the action of taking this animal, why don't we assess him for it? It's common. There is a value of this animal. If a nonresident decides to pull the trigger, he is a payer. If he decides not to pull the trigger, he is a camper. That's my suggestion.

MR. HUNTER: Dan Hunter, Rocky Mountain Elk Foundation, and Volunteer State Chair. There seems to be a rush for us to come to some type of conclusion or answer to this very difficult question between the options that Game and Fish has presented and the possibility of the options that Scott, the attorney, mentioned. But I think it would be in the best interest of all Arizonans if we stop, take our time, get it right, and get it right the first time. If we shoot from the hip on this, it's going to take a smart attorney to stop it in court, and we are right back here again next year doing the same thing.

MR. UNMACHT: My name is Jim Unmacht, and I am the President of the Arizona Antelope Foundation. We are in favor of many of the Department's recommendations as noted in the previous presentation by Steve Ferrell. I'd like to make a couple of comments, however, on some. We ought to accelerate the conservation bonus points for hunters and conservation people in the state of Arizona. I was on the Wildlife Conservation Council committee that helped submit that proposal to the Commission a number of months ago; and while I understand there's a number of issues that others have brought up with respect to the cons; I think there are some good answers to those cons. So I would urge you to accelerate that for the people that are volunteering their time, hundreds of hours, and thousands of dollars to help perpetuate Arizona's animals. I would also urge you to consider raising the maximum bonus point pass in the draw; and also, something I don't think was brought up yet, but possibly consider a once-in-a-lifetime option for some of the species that we are dealing with, such as Kaibab deer, maybe even pronghorn. Finally, I would urge you to support Attorney Scott Bales' two-tier tag proposal, to be proactive with respect to trying to preserve Arizona's hunters' options when it comes to the draw system. As I thought about it earlier, we are out there trying to grow and cultivate these big game animals, and nonresidents are going to be out there harvesting them and not participating in all this other activity that we are trying to do to perpetuate the opportunity.

MR. SIPE: My name is David Sipe, and I represent only myself. I am an Arizona native. I have never hunted in any other state. Every dollar I spend to hunt, I spend here in my state. I thought it was called intrastate commerce, and I value it. We have been discriminated against. Now is the time for this Commission to lead this state and this country in making a statement that we will try to protect and preserve opportunities for the residents of this state. We need not turn over because one judge made a ruling. Now is the time we need to step up and set a precedent; now is the time we need to take aggressive steps that will ensure hunting opportunities for the residents of Arizona for this coming year. We need to let this nation know that Arizona is going to protect its animals from commercial slaughter and support its residents. We need to get this nation pointed in the correct direction for game management. Let them sue us until the Supreme Court of this nation notices the average, every-day hunter that wants to pass this heritage on to his children and grandchildren. There is one idea that I believe could be part of the answer. We need to give more consideration to ideas that can be done to help the residents by this coming April. I don't agree that the cons for this idea should place it in the "Not Recommended" category. Please consider changing the value of the permanent bonus points for completing hunters education course. I am sure the Department has the stats to figure out exactly what value to give it in order to have the effect desired, whether it's three or five, or whatever. This change would be totally nondiscriminatory. Every nonresident that has completed it in the past, along with the residents, would receive the same permanent bonus points, every person who does it in the future would also. This is totally an optional choice for those who wish to participate. It is not mandatory in order to apply for a permit for a hunt here. This being totally optional, it would not require the State to respond to demand in order to be considered nondiscriminatory. We could give preference to residents that are waiting.

MR. SULLIVAN: My name is Dennis Sullivan representing myself. First of all, I'd like to speak out against the conservation bonus points. I think that it discriminates against people that perhaps work out of town. They are gone for five days, and they come back, and they've got to be gone again, perhaps on a weekend. They are not going to be able to be with their family. I think that it discriminates against the use because of the legal liability on trying to work on projects. I think there is a legal liability there. If somebody is retired, they can go work on a project every day. If somebody has a job, they've got to go to work. I'd also like to voice moral support for Mr. Bales. I think that the Commission is obligated to fight this thing to the end. We have not lost.

MR. KREUT: Al Kreut, from Pinetop/Lakeside, Arizona. I consider myself an active hunter, not just a general hunter. It's two different things; an active hunter joins a club, he does projects that help wildlife, he helps the Game and Fish Department raise money, and he helps the Forest Service improve the habitat. The inactive hunter buys his tags when the time comes, and goes hunting. I have been in the White Mountains almost nine years now, and I haven't missed any of the public meetings for Game and Fish there. Last Wednesday night we had over two hundred people that were interested in what's going on here right now; more than at any time in the past. When Richard Rico presented to the Commission for us to go on the Internet, at the time I thought that was a good suggestion, because he explained that it would save the Department seventeen to eighteen thousand dollars. I've had a hunting and fishing license since I started hunting in about 1951. I think today, if it's going to cost me thirty or thirty-five thousand to go back to the old system and eliminate the Internet, I'm all for it. That's what the people voted in

my area of the state last Wednesday night. I think that will accomplish a lot of things, because if you go to a big sportsmen's show, Pennsylvania's the biggest, and I've been at many banquets, somebody's got a ticket for a gun for five bucks, for another hunt for fifteen dollars, or ten, you buy them. They get twenty to thirty thousand people to plop down five dollars and sign a Power of Attorney slip to put in for an elk permit in Arizona, it's very reasonable. But if those twenty or thirty thousand people have to plop down a check for four hundred and some dollars and fill out the application and mail it in, they won't do it; they're too lazy. I think that is something that we could do without, to change that portion of it, to eliminate the Internet and go back to the regular draw where you put your money in, pay your money and take your choice. Now, one of the things that was brought up today that wasn't discussed much in our region was the conservation bonus points. As an active hunter, I have contributed this year, from now, around over twenty volunteer man days for Game and Fish and Forest Service. The average hunter that sits out there, he's relying on us active hunters that belong to the clubs that raise anywhere from hundreds to thousands to millions of dollars, like the Rocky Mountain Elk Foundation. We think you should listen, and I know you do listen. I think the conservation points is a good idea to encourage more people to participate.

MR. AMMONS: I submitted a letter for the Yuma Rod & Gun Club, which I'll speak about here in a minute. Personally, I submitted a letter on August 4th, and it was talking about what I consider the real hunters in Arizona that plan ahead and really want to go hunting. Let me discuss some of the ideas: No Internet applications; put the money up front for license fees and such. Also, we should go a step further and have a signature verification or Power of Attorney's verification. Even if we are not going to use it, the people won't know we are not going to use it. They are going to think about it when they put the thing in there and you've got a verification of their signatures. To have a deadline with no extensions would be another nice thing. On Arizona public radio there was a story of an Arizona guide who put in six hundred and sixty-one people himself. I'm sure he's got Power of Attorney for those people, but maybe he could turn in proof, so we could better help the three hundred and eighty thousand people that put in this year.

MR. NEVINS: John Nevins, representing myself. I would like to bring up the part about eliminating the Internet. While the ten percent cap has been lifted, I think we ought to eliminate it due to the fact of PITA. Once PITA gets a hold of this, they are going to throw a full assault on the Internet. They have a multi-million dollar business, they have thousands and thousands of people worldwide, and if they can get a hold of this and put it on the Internet, it would just be devastating to the draw.

MR. MARTIN: I'm Don Martin. The first three I am going to address, I am representing the Mohave Sportsmen's Club. I am the government liaison. The first one is that we absolutely support doing away with that Internet draw. That's just about universal in our group, and that's been brought up. Also, the members urge the Commission to devise a plan for all species. Don't just try to piecemeal this thing, band-aid the elk and the deer, because we know we are going to get bit on everything else. So when we come up with a plan, let's make sure that it covers everything, so we are not back in this jackpot again. The third thing concerns the conservation bonus points. The Mohave Sportsmen's Club absolutely supports the conservation bonus point concept, with the following caveats: They do not support it with permanent bonus points that are carried for eternity. When an individual works on a conservation project, gets a bonus point,

then he retains the bonus point until he draws for that species; then he drops his conservation bonus points and starts over again. We feel that the purpose of the bonus points is to assist in drawing tags; and just that. To let them be permanent in nature may not work as well as we had hoped. Now, in this last item, I'm going to represent Don Martin here. It concerns the supplemental draw and the tags. I was one of the unfortunate ones that drew a 12B West lake deer tag this year. When I applied for that tag, there were sixty-five permits authorized for that. I waited a long time. I have drawn three mule deer tags in fifteen years in Arizona, and I am not unhappy to wait that long to go on a hunt of that nature. That hunt is under the alternative deer plan that the Department is supposed to use which calls for low hunter densities and harvest of older age bucks. I submit that when the supplemental draw came through, and I understand that you folks were pretty well handcuffed on that, you put twenty-two more hunters in an area that now went from sixty-five to eighty-seven. Now, this year we didn't have the foresight, that unit was split. Last year all the permittees could go over, and they could spread out. This year, the eighty-seven are going to be assigned a specific area. I don't think it's safe. I personally don't think that the resource should have to take that kind of hit. I offer this to you: I think that the Commission ought to make available to anybody that drew in that first draw the opportunity to turn their tag back in. I am willing to join that pool of one thousand and some bonus point holders for deer because I don't want to go up there this year, when there's that many people stuffed in that area. Also, I'm more concerned about the resource. Those people are going to go up there, and I understand the "Most of those deer are in Utah deal," and I know Utah is not happy. I made a phone call, and Utah is madder than wet hens about the extra permits in there. I would like to offer to the Commission the opportunity to say that if you drew, and there are supplemental people in there, and you think that is going to impact the quality of your hunt, then you have the opportunity to give that tag back this year. Give me back my bonus point, and I will take my chances down the road. I feel that the resource should be first and foremost; they shouldn't be letting these tags in there. I also think that the quality of the hunt that I applied for, as outlined by the Department, was a quality hunt, but is no longer a quality hunt.

MR. KASPER: I'm Mike Kasper, a retired educator. I've lived in Arizona for thirty years. I am going to represent all those people that were a little afraid to come here; the moral majority. First of all, Scott Bales took the suggestion that many of the guys in the Verde Valley are real concerned about taking our big- game species off the commercial status. I think the entire State is behind you on this, and we will support you one hundred percent. All the outfitters and whatnot are going to fight you. My next suggestion to you, Steve, is that you take the big five, sheep, bison, elk, mule deer, chase deer and bear, that's six, but I put the two deer together, and make them a separate situation where you cannot receive compensation if you receive a tag to hunt these animals. We've got to stop pimping our big-game species. It is wrong what these outfitters are doing. We need a strong Commission to stand up and say that, you won a battle, but the war is not over. The third thing I'd like to mention is that we'd like to take a look at the lottery system; some of us are dissatisfied with that. The last thing is your support, pay to play. If you don't put your money up front, then you don't enter in the lottery or whatever else we have going on.

MR. CIMELLARO: My name is Pete Cimellaro, representing the Arizona Sportsmen for Wildlife. Some people are not familiar with our organization; it's relatively new. It's a group of Arizonans, mostly native Arizonans. We average at least forty years in the State of Arizona,

who have been life-long hunters and fishermen who want to assist the Game and Fish Department and other wildlife organizations in political issues for wildlife. We have evaluated all of the proposals that the Department presented here today and we have a few that we strongly support. We think it's important that every applicant must be required to purchase a license. That's an investment in wildlife, and that is something we want to see, resident and nonresident alike. Fee increases, it's time. I am not looking to take it all out on the nonresidents. It has been a number of years since we have had a fee increase here. We understand the crunch the Department is in. We support fee increases, and we will do so at the legislature when necessary. We think it's extremely important to raise the percentage involved in the maximum bonus point pool. Those people that have been waiting the longest, we would like to see that raised from the ten percent it currently is to be at twenty, twenty-five, whatever the Commission ultimately decides. These people have been putting in diligently, they are sitting on the sidelines willing to not get a permit in order to get the hunt that they choose. There are a lot of us out there with fifteen bonus points now for certain species. We understand what biting the bullet is, so we will continue to do that, but it would be great to see us cycle through those a little faster. We are an advocate of the conservation bonus point system. We recognize that we have not fully decided what that product is, and I share some of the concerns that Steve mentioned to us earlier. It needs to be ferreted out, and we need to go through it, but the simple fact is, it does all of the things that we need it to do for wildlife and sportsmen. It too makes an investment for families and kids to get out and be involved in these programs. You can no longer expect to buy a license and receive a tag to hunt in the state of Arizona. Those days are gone and they are not coming back. If it means enough to you, you are going to find a way to participate in one of these programs. It is essential that that program gets established. We did retain Scott Bales to be involved in this process. We felt that some outside counsel was important on this issue. It's an issue that the Department has defended for years, and defended bravely; but quite frankly, defended basically a position they couldn't win. Scott said, he would go forward with this. I think that is an extremely important point for all of us here to understand, that we have a fight worth fighting. This is the only issue that gets us where we need to go to defend the cap. I have heard it a lot, and I've heard it the last few weeks, and it is overriding this issue; it is liability. I am no expert, but there are a couple of things here that really hit home. If you advance legislation to help promote this plan, there is a process that protects that. The Commissions and Boards are indemnified in this state in many ways to protect them, so that the actions they take are indeed covered. Could it come out of the Game and Fish Department's budget ultimately if they lose this? Yes, it could. Could it wind up in wildlife money coming to defend this? Probably; there is not one sportsman in this room that would be opposed to money going into this fight that came out of our pocket. Arizona has been a leader in wildlife conservation, and I am calling upon this Commission and this Department to continue to be one. We need to advance the proposal, we need to be aggressive. Let's lead the other states, not wait on the sideline for somebody to determine this issue for us.

MR. HOPKINS: My name is Steve Hopkins, and I'm from Tucson, Arizona. I am here representing the Southern Arizona Sportsmen's Alliance and I would like to show all our support to Pete Cimellaro and his group and the attorney they had present here for their ideas. I want to start by saying that I don't envy the Commission's or the Department's position here today in regards to the issues at hand, and I pray that you come up with a good and fair solution for the residents of Arizona and the hunters and sportsmen of Arizona. The circumstances of this

gathering are unfortunate; and at the same time, it may be a positive. It's going to force the Commission and the Department to make some changes. Hopefully, those can benefit the resident hunters of the state. I'd like to go on and say that I have four children, three of whom are hunters. On behalf of my kids I am asking you, whatever decision you come up with regarding this cap and these effective changes, that you make those changes with the young people in mind, for they are the future of wildlife conservation down the road in this state. Today, not only is hunting a big business entity, drawing in hundreds of millions of dollars annually throughout the United States, it has also fueled the egos of many hunters, sportsmen and anglers across the land. My point is that we need to keep this in perspective as well. The other issue regarding the money, and it is a major concern of mine, is that it raises the cost of tags so high that only the wealthy will be able to hunt. I'm in the blue-collar sector in this state, and represent many of our sportsmen. We cannot afford too much more than I was paying prior to the Internet going into effect. So when you apply for all species for five or six members of your family, the costs get prohibitive if the cost is so much higher and you have to prepay; although I still support prepaying and abolishing the Internet. I would, however, like to see the Internet kept in place for checking your results after the draw has been completed. So if you're going to raise fees, raise them for the nonresidents, and just a minimal amount for the residents, to keep everything in perspective. On one last note, I'd like to tell you that great leaders are made up by great fights, and our confidence in you is that you are great leaders and we are going to support you in this great fight.

MR. EICHELBERGER: I'm Ron Eichelberger and I'm here representing the Arizona Elk Society. I would like to say first that we, as a society, support the Arizona Sportsmen for Wildlife proposal as presented by Pete. Rather than go through all those things, I will just say that we are solidly behind that. One additional thing that we would like to see, and it has been said by almost everybody, is getting rid of the Internet. We have seen what happened as soon as the Internet came in place. I'll just support that by saying that buffalo nonresident applications went up from three the last year, the regular old way of applying, to thirty-nine the next year, when we had the Internet applications. That's what we are facing as residents, so we would like to see that go away. We also strongly support the conservation bonus points. Again, we know there are things that need to be worked out there, and they can be worked out easily. We definitely favor Arizona residents, as well as rewarding those people that are out on the ground working. The last thing I'd like to say is that we recognize that there isn't any one of these options that's going to fix this whole situation. We recommend that you look at the options that favor residents and yet are nondiscriminatory, and look at them as a whole. All of those options we would like to see implemented.

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(Recess taken.)

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MR. FUGATE: I won't go through our proposal, except for one item. I believe that there is an option today for the Commission to take, and it is to develop a nonresident only set aside draw for nonresident applications only, ensuring that nonresidents have the opportunity to apply for big game hunts at a level not to exceed the highest number of nonresident tags, which would have been issued prior to the ten percent cap becoming unconstitutional. In other words, you

have a separate draw. It is discriminatory, but it is less discriminatory than the original ten percent cap because the Commission and the Department can prove that the nonresidents would have a better chance of being drawn. That's my opinion on behalf of the Rod and Gun Club after reviewing the twenty-six page order by Broomfield. He gives you those guidelines and you would be staying within them. I don't think anybody could say it any clearer than the attorney that was before you today. You must take a stand, and you must make a decision, today.

MR. JOHNSON: My name is Bruce Johnson and I live in Flagstaff. First of all, I think that some of the speakers have said that it is absolutely right that most of these things on this list are just nibbling around the edges. I would certainly encourage the Commission and the Department to continue to take a strong stand, if it means continuing the fight in court as a result of new legislation you would propose. In terms of these recommendations, I certainly support requiring all applicants to have a hunting license before they apply. For people to have to post their full fee for the permit when they apply, whether that means getting rid of the Internet application process or going to the bank transfer process, as opposed to credit cards, that doesn't really make a lot of difference to me. I support the recommendation to increase the percentage of permits that are allocated in the bonus pass, but partly for a completely different reason. When that was put in, it was an attempt to try and help those folks who had put in for a long time get a permit. Its usefulness has basically been outlived. With respect to antelope permits, there are fewer and fewer units that have even ten tags in it, so there is not even one tag that is available for the bonus pass. For sheep, for the last couple of years there has been none. There are no permits allocated in the bonus pass, because none of the units have ten tags any more. So I support that, but partly for a different reason. I have some questions about how these pros and cons were made up, because some of them don't make a lot of sense to me. The Department is supporting No. 2, which I have no problem with, but they are not supporting No. 1. They say, as to No. 1, for instance, not much impact for residents for deer and elk due to nonresident bonus point totals. Well, No. 2 has exactly the same argument as No. 1. If you look at the bonus point totals for deer, for instance, for those people with seven bonus points, there are actually more nonresidents than residents; the same for people with six bonus points for deer. So allocating, and by the way, that by definition means that they have been continuous applicants, they have to have been to have the maximum number of points, they have to have applied every year. And those with six probably just don't have the hunter education bonus point, so they probably applied for six years in a row. So having an additional bonus point allocated for continuous applications helps all those nonresidents as it does the residents, just as No. 1. So I hope there is not any kind of agenda here about which the Department likes and which it doesn't like without objective criteria, because I don't think, at least in that case, the criteria were evaluated objectively. I don't care either way whether that one is part of it or not. I just think that there needs to be a better explanation of some of these in terms of the pros and cons and how they really apply, and more consistency. Lastly, with respect to the conservation bonus point, in principle, I support that, but I have a lot of questions about how it would be implemented. Well over ninety percent of the hunters in Arizona don't belong to any conservation organization; I don't. But many of us do projects out on the land that are not proposed by those sorts of organizations. I happen to belong to a local organization here, the Diablo Trust. It's made up of a group of people, not just hunters; it's ranchers, it's environmentalists, and so on. We do projects out on the land that help the land and game, too. So I have a lot of concern about the details of how that would be implemented, to make sure that it's fair to all hunters, and that all hunters have an equal

opportunity to get that point, and it doesn't become an avenue for the "good old boys" to get a point, to the detriment of the rest of the hunters in Arizona that may not belong to those organizations.

MR. DOLAN: My name is Brian Dolan and I am president of the Arizona Desert Bighorn Sheep Society. The Arizona Desert Bighorn Sheep Society is not satisfied with having thirty-five percent of our efforts going to the benefit of nonresidents. If you look at the numbers from our raw statistics last year, you will see that we had almost twelve thousand resident applicants, and almost six thousand nonresident applicants. That is a two-thirds/one-third split. The success of the bighorn sheep program in Arizona has been with the Arizona Bighorn Sheep Society for almost thirty-seven years, and the efforts of the Game and Fish Department. We need a discriminatory cap, and we are entitled to a discriminatory cap. I would like to urge the Commission to please consider that. I don't think that this is something that a one size fits all solution is going to be made. I was prepared to come to you last week and tell you to take Rule E. I think Rule D sounds just fine. Obviously, now there's a different opinion out there. I am all right with trying to throw both those rules out and trying to fix one, but the message I want to leave with you is that bighorn sheep is different. It's a finite resource. The people that apply are serious applicants. You could implement all seventeen of those nondiscriminatory suggestions, and I doubt that you would make a five or ten percent difference in the draw pool. We need a discriminatory cap, and I would expect that the Department would help us try to figure out a way of making it happen. Consequently, the Arizona Desert Bighorn Sheep Society fully supports the current proposal by the Arizona Sportsmen for Wildlife.

COMMISSIONER MELTON: Do those figures reflect off the Internet; has that been a pretty steady figure before the Internet process came on as far as nonresidents to residents?

MR. DOLAN: The Internet has made it easier; but I think across the board, it's probably the same. I don't have the resources to go back and check. That's why I don't think whatever we are going to do with the Internet is going to make that much difference with bighorn sheep. Those folks will figure out a way of still complying with our rules, and their level of participation will probably be the same in relation to residents. I personally am opposed to the on-line application process; but how it affects bighorn sheep, I don't believe it will make that big of a difference.

COMMISSIONER MELTON: That wasn't my question. I think the on-line application is getting a lot of flak. I think it was more that the five-dollar fee was more the problem than anything else on the on-line application simply because it's easy to put in, and you can put in your neighbor and your kids. Like a lot of people have said, it's pretty easy to put in. If you don't get drawn, it doesn't cost you but five dollars. I think we should probably try to fix the fee problem, because the Internet system does have a lot of value as far as checking up on your stuff. I get a lot of opposition to the Internet, but I think the opposition is really to the fact that it's too easy for somebody to put in with five dollars and put their application in. As far as the sheep goes, I think that's a completely different ballgame, and I'm like you, I think we've got to look at some way to completely eliminate, or almost eliminate, nonresident applications on that. One way may simply be that any hunt that has a certain number, five, six, of sheep tags within that area is ineligible for out-of-state hunters, and then there would just be specifically a few available ones that we could set aside. When you look at all the other states and their figures on

these issues; when New Mexico can charge three thousand dollars for a sheep tag; and I don't know if they have their sheep like we have, as far as quality goes, but they seem to be getting by with it. I think their in-state fee was a hundred and sixty-three dollars, or something like that, so there is a great parity between the other states and what we do. If you guys can bring any of those to the front, we will be more than glad to look at them to see if there's some way that we could protect the sheep in the State for the residents of the State. What I am trying to convey to you is that the bighorn sheep program in this state is special, and it is deserving of a cap. I think you need to figure out a way of implementing it, and not doing it over a two or three year period. We need to have it in place next year, or you are going to start losing a lot of interest.

CHAIRMAN CHILTON: It seems to me like it may be easier for the Department, not easy, but easier, for them to establish a factual basis of data about the impact of out-of-state hunters on that particular population than it would be on elk or something with huge numbers. So maybe we can begin to establish the data base to permit us, in as near a future time as possible, to have something that resembles a defensible cap.

MR. DOLAN: We all read the ruling, and we will probably have a different interpretation of it, but the one I keep looking at is that they didn't say we couldn't have a discriminatory cap. They only said we had to have the least discriminatory cap to advance the State's interests. I guess what I am trying to tell you is that our interests are pretty important to the program of Arizona's bighorn sheep and I would like to continue that program.

COMMISSIONER GILSTRAP: I think it's very important for the Bighorn Sheep Society to work with what they identify as a cap, and I am assuming that is part of your issues. In addition to having a finite resource, you also have units that have one permit, some have two, up to five or so; the numbers are not any kind of a fractional part. So it's going to take a great deal more tedious effort to carve out whatever is going to be available for nonresident harvest. We are kind of throwing it back to you to help us with that.

MR. DOLAN: We certainly will. We will start at Rule B, the way it's currently written, and maybe serve those slideboards a little bit instead of throwing them way back.

MR. McCASLAND: My name is David McCasland. I am representing myself, and I am also on the Board of Directors for the Sheep Society. If you recall, this past year there were eighty-two permits available for bighorn sheep. I think the highest we have had is about a hundred and eight. If you even reduced the amount of applicants in half, which I believe is pretty close to where it was before the Internet came on line, any of the types of recommendations that we are making right now really wouldn't significantly support residents versus nonresidents. So maybe that gives you a little bit of why we feel that a specific cap is very important. Primarily, I am in support of a lot of the different recommendations that the Game and Fish has made. One thing that's probably a little different, and I am going to represent myself in this part of it, is one of the specific things I disagree with a lot of folks on. I think we still should maintain the Internet application process, partly because it eliminates the errors. That has been documented. I don't see a reason for us to go backwards. It seems sort of antiquated to back to a manual draw system when you have an Internet application process that you can get results from. I do support the electronic funds transfer, or the Master Card/Visa type process. I would recommend that, if it's

possible for the Commission to get outside legal representation to deal specifically with the Master Card issue. That would be one recommendation. The license fees, I agree with Commissioner McLean, his idea of not looking at an increase of twenty percent or forty percent across the board. I liked his idea of establishing the prices first, and then setting a cap for the legislature off of that. I really think that you should try to minimize the resident increases. There are a lot of individuals that aren't capable of supporting any higher costs than what we are already paying, so I would highly recommend that. As far as the conservation bonus point, I do think that's a valuable tool. A lot of the clubs and organizations, you will find that in many of the organizations, are members that are forty years or older in age. We are trying to pull younger people into those conservation areas, but I think that you are also involved with the fact that you are looking at individuals whose families are a little bit older, their incomes are more, they have more vacation time. All of these things allow for them to be able to participate in a conservation program when others might not. There was commenting on the squaring of the bonus points, that it's not recommended, and I agree with that. I think that if you have the squared bonus points, people may get drawn; but once they get drawn, they may never be able to get drawn again because of the fact that there are just so many people applying for our few permits. There was a suggestion made to charge higher tag fees for the premier hunts. I am in disagreement with that particular position, primarily again because the resources for a lot of folks that want to hunt are not able to support higher tag fees for resident hunters. Nonresidents, I think the ones that are applying can afford those prices, or else they wouldn't be applying in the first place. And then losing the Arizona bonus points if drawn for a lottery, I am not in favor of that particular one either, simply because if people are applying and they lose them, then they don't have those opportunities.

MR. HEATWOLE: My name is Nick Heatwole. I am from Yuma, Arizona and I am representing myself. At this point, I would have to say that I concur with all of the Department's recommendations, of which they highly recommend. I think everybody should be required to purchase a license before they apply for a big-game hunt. Also, I don't think the Internet application process is a problem. I think it's the fact that you don't have to put your fees up in advance. If we can work out a way that we can do the electronic funds transfer, make it work with Visa, one way or the other, I think the Internet has merit. The Internet isn't the problem; it's just the fact that we are not putting our money up front. All the rest of them I think are pretty straightforward, and I am in support of those. Additionally, you have listed options that are under consideration, and I would like to make a few comments about some of those. The increase of bonus points pass percentage is definitely valuable. We need to find a certain level where we think that's going to benefit the residents more than the nonresidents. Secondly, the awarding of bonus points for a combination license purchase; that's pretty straightforward. But we might want to just take a little closer look at that to make sure that's something we really want to do. Finally, the conservation bonus points is going to have huge advantages for both the Department and for the constituents of the resource. I think it's something that's extremely valuable. I understand there's going to be a lot of implementation problems, issues where we might be discriminating against some of our own residents and things of that nature, but I think if we all are able to work together and get enough comments out there and enough cooperation, we can come up with a plan that most of us can agree to.

MR. COWIE: I'm Marty Cowie. Number one, I feel that the biggest thing is to actually fight this court ruling. We need to try to make it illegal to kill Arizona big game for the direct sale of the parts. My thought was that if somebody does kill an animal with a legal tag, maybe it's five years down the road before he can then get a permit to sell that. You've also got to have taxidermists or heads that have been mounted that people have. If that person is deceased, now it's his family's, they don't want it any more. What are they going to do, throw it away? So if we could still get some way for that to still be sold further down the road, I think that still takes care of the commerce part, because they're not going to want to take that animal and hold on to it for five or ten years. Regarding the hunter safety course, a lot of people have been talking that it has to be an Arizona safety course. That's wrong. I think the hunter safety course is a good idea, but it needs to be any state. It qualifies you to hunt in Arizona, if you let Arizona residents grandfather their license. If I've already got a license, if I get a license next year, I don't need a hunter safety course. If you skip a year, now you need a hunter safety course. That would help you not overload your hunter education, for the time being. Staying up front on the Internet is probably the biggest thing that can help. It's going to take out the last-minute applications and it's going to take out the guy that didn't plan on it. As far as the Visa/Master Card, I don't know whether, instead of having an application fee and a tag fee, if it was all an application fee. Instead of two fees, make it an application fee. If he is paying for the application fee for the full price and then there's just a percentage, you refund the money back, and you keep a percentage, not necessarily an application fee. As far as the conservation point, I feel that it's also a good idea. I don't belong to any other organizations. I guess I'm an inactive hunter, according to some people here. It's a good idea to push people like myself to get involved. I am over forty and I am to the point where now I can start to do it. I think, as far as answering some of the questions on that bonus point, it should only be one point, just for that year that you worked. It's just year to year. It's nothing that you save, it's nothing that you keep up. Those are basically my ideas.

MR. SLADE: My name is Dennis Slade, and I drove up here from Mesa this morning. The whole reason we are here was because of two things; and it was the mule deer bucks north of the Colorado River, and the bull elk. We should be willing to treat those separately from the other animals. We keep hearing about premium hunts and we have no such thing in Arizona. There is nothing in the regulations that spells out just a premium hunt. If you look at New Mexico, and I noticed that these license fee schedules that compare us are way out of whack, whoever did this hasn't hunted in New Mexico or Colorado recently, because I paid a lot more than that. They charge more for their premium units and so forth. We ought to be able to charge more for our deer hunts in Units 12 and 13 and not be afraid to do so. We should be willing to treat our bulls different than our cows as far as fee structure. The other thing we need to consider is raising, and this hasn't probably even been brought up, the price of these nonresident things without raising the resident things. We can try to bring ourselves more commensurate with these other states by doing that. I would also suggest that we add the December cows, whitetail hunts, to this trophy qualification and give them a premier status and allow to charge more for those, whether in the application fee or whether it be in the tag fee itself. I know it keeps getting brought up, but it really is a sore point with many, many hunters in Arizona. I noticed most of these non-discriminatory suggestions, like the ten percent cap, have to do with bonus points. I think we're way too hung up on bonus points. I don't think they're the solution to everything. That's a nice bone to put out there, but one nice thing about Arizona is that no matter if you don't have any bonus points at all, you still have a chance to get a tag here; and that is a nice point.

That's why I'm totally in support of your position on No. 1 about doubling or squaring the bonus points like Nevada does. That would pretty well rule out everybody that doesn't have very many bonus points. I noticed that the Department's position on a lot of these suggestions is against the ones that require any legislative action, and I hope that it's not just because you're afraid of the legislature. You'll have a lot of support from us. If you think it's a good thing to do, put it in front of the legislature. We will lobby them and get it through. I don't think you need to worry about that kind of support, so don't let that be the deciding factor in that.

CHAIRMAN CHILTON: Raising the fees on all applicants by an equal percentage is, on its face, not discriminatory; whereas if we only raise them, say, thirty percent or forty percent on out-of-state, it is, on its face, discriminatory. That's about the only thing we can do and still defend it in court.

COMMISSIONER GOLIGHTLY: We have been told that the credit card program we belong to, in order to use a credit card, which is firmly tied to the Internet now, that we can't award something, that we can't take your money on a credit card without giving a product. Have we thought about a commemorative or a token or something that comes along with an application. What is considered a product? We really need to get over any obstacle that comes along if it promotes this whole thing, and I think this whole issue has really brought a lot of people here and a lot of attention to the problem. Have we defined what a product is?

DEPUTY DIRECTOR FERRELL: I would like to have Jim Odenkirk answer that. The only time we have come close to doing that is maybe a year or two ago we considered the opportunity to be drawn a product. I know that one didn't go very far with the credit card company.

MR. ODENKIRK: I may not have said very much about this, in part because this isn't a legal issue. This is one that is established by Visa/Master Card. We can certainly identify what is being purchased, and at the point of the application being submitted, we can use that as a transaction for something that is being purchased. The credit card companies, however, may have a problem because there will still be the issue of many people not getting permits, and they will have to be refunded money, either through a backcharge through the credit card or through a refund. Because that possibility exists in large numbers, the credit card companies may not support our efforts. It is not a legal issue, however.

DEPUTY DIRECTOR FERRELL: Here is my idea that might facilitate you moving through all the decision points you have before you today and maybe making shorter work of that. I have listened and taken notes on all twenty speeches we have listened to today, and I am trying to sense some areas of agreement or confusion or disagreement. One of the things that might be a good first step would be to look at those five items that the Department highly recommended. The second item on there, essentially item No. 5, Charge up front for Internet applications, this whole business of the Internet, we don't need to really craft rule language for that by September, so there is no sense of urgency to decide that issue today. There is no rule or statutory nexus for that idea. So what we might do is put that on the September agenda as a separate agenda item just to invite more public debate on whether or not the Internet should be salvaged in some capacity, whether EFT should be part of that proposal or whether it should be dumped altogether. It doesn't put us behind the curve, if you will, on the rulemaking time frame for next April

because there are no rules attached to that one. Another item or suggestion on the five items that are on the Department's "Highly Recommends" list is No. 7, which is requiring all applicants to purchase a hunting license. That one, if you do give us direction to do that, just bear in mind we would proceed with rulemaking on that, but we would have to pull it if the Attorney General came back and told us that it's unlawful before it got to the point at which you would have to submit it to GRRC. I think GRRC would sit on it anyway until the Attorney General did rule on that. Those are the only two caveats that I would have to the recommendation of trying to move those items on the list of the Department's "Highly Recommends". Then I haven't heard anybody speak out in support of any of the items the Department did not recommend. So perhaps you could make a motion to take those off the table, unless there is some interest in any one of those specific items. Then, the longer list of items that the Department still has under consideration; there seems to be a lot of agreement for the increase of the bonus pass percentage. Perhaps, since that is new ground for us, the Commission might want to consider increasing that in a small amount, instead of a large amount, at first, and maybe that twenty percent, that bonus point pass, might be a reasonable motion for you all to consider. The conservation bonus point, since there are a lot of ideas out there prior to today and disagreement on which is the best way to approach that, perhaps you can give us direction to craft two or three different types of proposed rule language for the conservation bonus point, and we can bring them all to you next month, and then you could pick one or modify one, and we wouldn't lose any ground on that rulemaking timeline, and it would give the public a better chance to pivot off of two or three Department proposed rule languages and we could have even more discussion on the conservation bonus point. I didn't hear any overwhelming support for the other five options that are on that list, so perhaps, unless a Commissioner finds merit in any of those, you might just vote to take those off the table. That's the premier hunts, the combo license, the fifty percent on the tags, the lifetime hunting license and the Arizona bonus points lost if drawn in another lottery in another state.

CHAIRMAN CHILTON: I thought I did hear some support for the premier hunts.

DEPUTY DIRECTOR FERRELL: If that's the case, then I would suggest that you just take that one separately and discuss the merits and vote on that one as well.

COMMISSIONER GILSTRAP: We have gone through quite a process for the last several weeks, and there has been a huge amount of internal work conducted. I know that Mr. Rico and his staff have brought us many, many alternatives, and Steve and his staff have prepared this document; there have been meetings throughout the state to deal with this issue; and obviously, there has been overwhelming input by residents of the state in their conscientious and sometimes emotional objectives in trying to come to some kind of a resolution. Maybe I am oversimplifying, but I would make a motion.

Motion: Gilstrap moved and Melton seconded THAT THE DEPARTMENT PURSUE THE FIVE ITEMS UNDER "HIGHLY RECOMMENDED," THAT WOULD BE NUMBERS 2, 5, 6, 7 AND 13; AND IN ADDITION TO THAT WOULD BE NUMBER 3, AT TWENTY PERCENT; AND NUMBER 8, IN THE CONTEXT THAT THE DEPUTY DIRECTOR RECOMMENDED THAT IT COME BACK TO THE COMMISSION FOR MORE

DETAILED LANGUAGE; AND NO. 4 ON THE ADDENDUM SHEET, THAT RECOMMENDATION BY THE ARIZONA SPORTSMEN FOR WILDLIFE.

COMMISSIONER MELTON: The Scott Bales proposal, how much different is that from the Yuma Valley Rod and Gun Club proposal on that ten percent? Is that within the same context, or are those two separate?

CHAIRMAN CHILTON: This proposal, as I understand it, I think he is referring to getting rid of the sale of parts.

DEPUTY DIRECTOR FERRELL: As I understand it, and I would invite anyone in the room to correct me when I am wrong, there is quite a bit of difference between the two. First of all, the Scott Bales proposal talks about de-commercializing wildlife, the sale of parts would not be eligible for animals taken under that ninety percent which are considered non-commercial tags. Where they are similar is that ninety percent of the tags would be reserved for residents. The difference is that under the Yuma proposal the ten percent set aside is available to nonresidents only; where under the Bales proposal the ten percent is a level playing field for residents and nonresidents to compete for equally. So under the Bales proposal you could have ninety-plus of the tags go to residents. Under the Yuma proposal, ninety percent would go to residents.

COMMISSIONER GILSTRAP: Maybe I will put an addendum on the motion. What my motion is, is for the Department to take these as I have identified, and there will be a great deal of additional work on each of them, because some need to go in the rulemaking process, some need legislation and go in the legislative process, and some need to be, I will say, wordsmithed in the process. I am not saying that as printed it's over. I am saying that this is the direction that we are giving the Department, to pursue these options for future implementation. They may or may not be implemented. They would take that group, as I identified in my motion, to start focusing and taking whatever steps are necessary, whether that be legislative, rulemaking or cleaning up of language, and pursue those only.

CHAIRMAN CHILTON: Would you consider separating that part 4 into two groups, one in which you just deal with one issue, and that is getting rid of the commercial sales? Or at least developing what other kind of consequences they might run into and how we deal with wildlife assets and that sort of stuff, but generally speaking, getting rid of the commercial leg that the court was standing on. Then your second half, like 4B, would be dealing with percentages and things that might resemble a cap, where I have a lot of qualms.

COMMISSIONER GILSTRAP: Yes, that's what I'm saying. That the Department bring that back to us. You guys take what we have here in this skeleton, and come back with a refinement, plus the procedures in implementation, which I think allows the opportunity to do what you are saying, including public input.

COMMISSIONER McLEAN: I think part of this question also goes to Mr. Odenkirk, and that is, in order to fully implement Number 7, Require all applicants to pre-purchase a license, requires an Attorney General's opinion, and we would have to have that Attorney General's opinion prior to GRRC review. So you all know, there is another body out there called GRRC

(Governor's Rule Review Committee) that has to double-check us before this can get passed. They aren't going to look at it until the Attorney General blesses it, so to speak. Jim, do you see any practical problem in getting an opinion before that February deadline? If you do, is there any way we can perhaps encourage my good friend, Terry Goddard, to move that up on the pile?

MR. ODENKIRK: Let me start with a separate premise, and that is that you don't need an Attorney General opinion to begin this process. There is a legal concern, with whether or not this proposal may violate state law. The thought is that you may want to have an opinion on that as protection before you go too far along with this proposal. You can start the process and continue along with it and await an Attorney General opinion, but you don't need to have that before you proceed. In terms of the second part, as to whether or not it could happen before February, the formal Attorney General's opinion process is not quick. There would have to be pressures outside the Attorneys General's Office that would bear upon the Attorney General to try to expedite that process. I will say, however, we are reviewing these internally and trying to look at ways to provide the Commission with advice that could be handled more quickly than a formal Attorney General opinion.

COMMISSIONER McLEAN: Since you raised the question of whether or not that proposal may violate Arizona law, is it your view that GRRC would want to see a formal opinion before they would review?

MR. ODENKIRK: I don't know if GRRC or its staff is even aware of this proposal and what legal issues are associated with it. They are independent and may make an independent determination on the merits of this proposal with or without an Attorney General opinion. They may decide that an Attorney General opinion will help decide it for them, but that is not controlling for that organization as well.

CHAIRMAN CHILTON: The issue is that it could be considered quickly, but if we make a very strong argument that the person is purchasing a license, and they can go out and hunt; I mean that you've got something usable in your hand, you are not just buying a lottery ticket.

MR. ODENKIRK: One of the concerns raised with the Attorney General opinion is whether this proposal would constitute prohibited gambling under state law. Now, there are some forms of gambling that are authorized. The question is whether or not this proposal would satisfy the exception or would be prohibited. There are other concerns that are not within the scope of the Attorney General opinion that may come up in the process of GRRC's review that we will have to respond to as well.

COMMISSIONER McLEAN: It seems to me that fairly recently you could apply for the issuance of a license upon issuance of a permit? Didn't we use to always have to buy a license before we filled out the envelope. That's my memory.

Public Comment

MR. FUGATE: So that we clearly understand what the Yuma Valley Rod and Gun Club proposal is I am going to read it to you: "Develop nonresident only set-aside draw for

nonresident applicants only, insuring that nonresidents have the opportunity to apply for big game hunts at a level not to exceed the highest number of nonresident tags which would have been issued prior to the ten percent cap becoming unconstitutional." Those are the numbers I am talking about. Up to and not to exceed that. Then the other very important part is that our proposal does nothing for sheep. So if you would please keep that in mind.

COMMISSIONER MELTON: Basically, you are talking at the same thirty percent cap before it was ruled illegal.

MR. FUGATE: Yes, whatever you were at before the judge told you it was null and void. In other words, you guys know the numbers that you were at for your species. Some of the particular hunt units were probably at the ten percent cap, but other ones weren't. So whatever your numbers were that you have been satisfied with since 1991.

COMMISSIONER MELTON: So actually, where we are at then is the fact that if we had a Unit 41 deer hunt in Yuma, and we only had two percent nonresidents apply for that, that would actually mean that that would be the cap in that hunt for the nonresidents because that was prior to that ten percent ruling.

COMMISSIONER GILSTRAP: I don't see that it as a challenge or a question. I think that can be either incorporated or not incorporated into my motion.

MR. FUGATE: The only difference between our proposal and Pete's is that we are not worrying about whether you are selling the parts or not. In our proposal, you can.

COMMISSIONER GOLIGHTLY: Are you talking about a ten percent cap?

MR. FUGATE: I am talking about Rule E.

COMMISSIONER GOLIGHTLY: If we have eighty-two sheep tags authorized by the Commission, only eight would have been the maximum amount of tags going to nonresidents. You are saying to take up to the cap, whatever, in this case it would have been eight tags, and put them in a separate hunt number of which only nonresidents can apply for.

MR. FUGATE: Correct.

COMMISSIONER GOLIGHTLY: So you are talking about a ten percent cap number for a nonresident pool.

MR. FUGATE: Right. I am talking about Rule D and Rule E as you folks had it before E was ruled unconstitutional.

COMMISSIONER GOLIGHTLY: Well, I think we can debate it to death. Let's just add Johnny's letter to our motion, and analyze it and bring it back to the Commission.

Motion Restated: Gilstrap moved and Melton seconded THAT THE DEPARTMENT PURSUE THE FIVE ITEMS UNDER "HIGHLY RECOMMENDED," NUMBERS 2, 5, 6, 7 AND 13; AND IN ADDITION TO THAT, NUMBER 3, AT TWENTY PERCENT; AND NUMBER 8, IN THE CONTEXT THAT THE DEPUTY DIRECTOR RECOMMENDED THAT IT COME BACK TO THE COMMISSION FOR MORE DETAILED LANGUAGE; AND ANALYZE AND BRING BACK TO THE COMMISSION, NO. 4 ON THE ADDENDUM SHEET, THE RECOMMENDATION BY THE ARIZONA SPORTSMEN FOR WILDLIFE; AND ANALYZE THE YVRGC REQUEST TO DEVELOP NONRESIDENT ONLY SET-ASIDE DRAW FOR NONRESIDENT APPLICANTS ONLY, INSURING THAT NONRESIDENTS HAVE THE OPPORTUNITY TO APPLY FOR BIG GAME HUNTS AT A LEVEL NOT TO EXCEED THE HIGHEST NUMBER OF NONRESIDENT TAGS WHICH WOULD HAVE BEEN ISSUED PRIOR TO THE TEN PERCENT CAP BECOMING UNCONSTITUTIONAL, AND BRING THAT BACK TO THE COMMISSION; AND FOR EVERYTHING THAT NEEDS A RULE, DRAFT PROPOSED RULE LANGUAGE AND BRING IT BACK FOR APPROVAL IN SEPTEMBER; AND EVERYTHING THAT REQUIRES LEGISLATION, BRING A DRAFT BILL TO APPROVE IN SEPTEMBER.

Vote: Unanimous

DEPUTY DIRECTOR FERRELL: There isn't any more time after September for you to decide whether the proposed rulemaking we bring you is going to go forward or not.

COMMISSIONER GOLIGHTLY: Once we open the rule on it, that is the public's chance to weigh in on it. That is our chance to take your recommendation, its pros and cons, and either accept portions of what we just said to the rulemaking process or talk it out.

DEPUTY DIRECTOR FERRELL: That's correct, but the next agenda item is to open the docket that will allow rulemaking to begin on all of these proposals that you have directed us to do proposed rulemaking on.

COMMISSIONER GOLIGHTLY: So we add those ingredients to that docket. The public can then weigh in or speak to each one of those citations that we have asked to be included in that docket. Then we get your opinion, we get the public's opinion, and then we vote whether to keep it on the docket or exclude it by individual pieces. Right?

DEPUTY DIRECTOR FERRELL: That's correct. September would be your last chance to decide whether something continues forward or not, except for legislation, of course. You can always change your mind on legislation.

COMMISSIONER GOLIGHTLY: How would you let the public know what is going to happen at the September meeting? What would be your plan since it wouldn't be in a formal rule package.

DEPUTY DIRECTOR FERRELL: The best way is through the public meeting schedule on the last page of your major handout. I also wanted to make sure everybody was aware that all those meetings are essentially in the next two weeks and that's the public meetings on proposed rules

in each of the six regional offices and Greenway. I would point out, though, that the Greenway meeting has already been moved to the La Quinta on Greenway.

To further clarify, I am assuming that every other proposal that is on the page with the additional options that may be discriminatory are now off the table as far as the Commission is concerned. That would exclude the Scott Bales proposal, which is already in your motion to proceed with. In other words, that the page that is titled "Additional Options that may be Discriminatory", items 1, 2, 3, and 6 are off the table. 5 is the Yuma proposal, and 4 is the Scott Bales proposal. They are still on the table.

CHAIRMAN CHILTON: All right. Because it is getting late, we are going to dispense with the item that was the selection of the awards for the presentation in January. We will do that next month. I would suggest to conclude with the call to the public before we proceed with any other agenda items.

Public Comment

MR. FUGATE: On something from yesterday, and I will make this very brief, Mike Taylor stood before you and basically, in my opinion, I was not here, but I have been briefed that he told you what you wanted to hear. I want you to know one thing. I have known Mike since 1986 and I have worked with him in these processes from the time he was a unit district manager to the time he was the number three guy for BLM. Please understand that Mike does not control the field office managers, and that is a very, very important thing that I want to advise to the Commission. Mike and Miss Elaine probably will have to do something and sign off on it when it's final. If it's not what you folks want, I can promise you one thing; that the Department will be coming back to you in the form of a Sikes Act document called an HMP. That's the how-to of what Mike promised you yesterday, or told you that we could get through. If we don't get it right in the RMP, then I am going to be standing back up here saying that it isn't going to work. Quite frankly, you will probably have Department people standing up here saying that it's not going to work. So the point I am trying to make is that the RMP and what Mike was trying to tell you is the right thing to do, but we've got to make sure that the right thing gets on a piece of paper.

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5.1. Request to Approve a Notice of Rulemaking Docket Opening for Publication in the *Arizona Administrative Register* to Begin Rulemaking to Amend Commission Rules in Light of the July 13, 2004, U.S. District Court Order in the Matter of *Montoya v. Manning*, CIV98-0239 PHX RCB.

Presenter: Mark E. Naugle, Rules & Risk Manager

MR. NAUGLE: The Department is requesting that the Commission vote to approve the attached notice of docket opening, so the Department may begin the process to developing rulemaking to address the ruling in *Montoya versus Manning*, schedule public meetings and give the public more opportunities to submit comments. The Commission will have the opportunity to approve or reject any of the amendments to the rule as part of the proposed and final rulemaking

processes. If approved by the Commission, the notice of rulemaking docket opening will be filed with the Secretary of State by August 17, 2004 for publication in the Register on September 7, 2004. The anticipated effective date for the rulemaking amendments is April, 2005, which will be in time for the 2005 fall draw. The Department recommends that the Commission vote to approve a notice of rulemaking docket opening for publication in the "Arizona Administrative Register" to begin rulemaking to amend Commission rules in light of the July 13th, 2004 U. S. District Court order in the matter of Montoya versus Manning, CIV 98-0239 PHX RCB.

Motion: McLean moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF RULEMAKING DOCKET OPENING FOR PUBLICATION IN THE "ARIZONA ADMINISTRATIVE REGISTER" TO BEGIN RULEMAKING TO AMEND COMMISSION RULES IN LIGHT OF THE JULY 13TH, 2004 U. S. DISTRICT COURT ORDER IN THE MATTER OF MONTOYA VERSUS MANNING, CIV 98-0239 PHX RCB.

Vote: Unanimous

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12. Litigation Report, Continued

MR. ODENKIRK: I will make this very brief. There was discussion in executive session concerning the disease problem with the Silverbell sheep herd and our efforts and ability to come to some type of resolution with the parties responsible in that situation. It is my recommendation that the Commission vote to authorize the Attorney General's Office to bring action against the entities and individuals responsible for causing the injuries to the Silverbell bighorn sheep herd and to prepare a letter to the Governor to allow for the Commission to initiate litigation against those entities.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO AUTHORIZE THE ATTORNEY GENERAL'S OFFICE TO BRING ACTION AGAINST THE ENTITIES AND INDIVIDUALS RESPONSIBLE FOR CAUSING THE INJURIES TO THE SILVERBELL BIGHORN SHEEP HERD AND TO PREPARE A LETTER TO THE GOVERNOR TO ALLOW FOR THE COMMISSION TO INITIATE LITIGATION AGAINST THOSE ENTITIES.

Vote: Unanimous

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9. Future Agenda Items.

DEPUTY DIRECTOR FERRELL: I have a list here.

- Provide the Commission with a briefing at the September Commission meeting on the effects of the Pinaleno fallout on the Mount Graham red squirrel habitat.

- Future agenda item to September of 2005. This is a whole year out. In regards to the renewal of grazing leases at the Grasslands Wildlife Area, have that item back on the agenda to submit grazing subleases to bid.
- In regards to recommendation No. 8, in the Arizona Rifle & Pistol Association MOU regarding independent audits, that those audits be conducted by an internal auditor annually, and then allow an independent auditor to come in if there are any adverse findings or disputes between the club and the auditor.
- Develop timeline for pursuing legislation from now through to the end of the session.
- Return in September with a more thorough analysis of the hunting rights issue.
- Send a letter to the Governor requesting permission to enjoin Mr. Johnson in litigation regarding the Silverbell sheep case.

COMMISSIONER GILSTRAP: Since there is a difference in the role and responsibility of the Commission and the Department, I would like to ask for an agenda item, if not in the immediate time frame, then relatively soon, to have the Commission have the opportunity to explore having legal counsel for the Commission; legal counsel that is responsible to the Commission, as opposed to the Department.

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Motion: Melton moved and Golightly seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned at 4:00 p.m.

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Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

William H. McLean, Member

ATTEST:

Duane L. Shroufe
Secretary and Director